

United States  
Circuit Court of Appeals

For the Ninth Circuit.

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Transcript of Record.  
(IN THREE VOLUMES.)

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WILSON AND WILLARD MANUFACTURING  
COMPANY and ELIHU C. WILSON,  
Appellants,

vs.

ROBERT E. BOLE and EDWARD DOUBLE,  
Appellees.

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VOLUME II.  
(Pages 321 to 672, Inclusive.)

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Upon Appeal from the United States District Court for  
the Southern District of California,  
Southern Division.

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(Deposition of Arthur G. Willard.)

Q. 118. How did the key in that reamer No. 120 compare with the key in this exhibit No. 255?

A. The same type of key.

Mr. BLAKESLEE.—Let it be noted that the witness in his recent testimony pertinent to the slips of paper has been referring to “Wilson Exhibit February, 1911, Wilson & Willard Manufacturing Company Shop Record Slips.”

Q. 119. Prior to the manufacture of this reamer, or the change over of this reamer No. 120, had you ever heard of a reamer constructed to include a 1-piece key like the one which was made for that reamer No. 120?

A. No, sir; not like the reamer No. 120.

Q. 120. Had you before that time ever heard of such a key yourself, that is, made like the key that was built into this reamer?

Mr. LYON.—Objected to as leading.

A. No, sir.

Q. 121. (By Mr. BLAKESLEE.) From whom did you first hear, or from what source did you first hear of a 1-piece key like the one that was built in the reamer No. 120 when it was built over?

A. I got it from the shop records of the Wilson & Willard Manufacturing Company.

Q. 122. Prior to the changing over of that reamer No. 120 did you ever hear anybody claim that he had devised such 1-piece key for such reamer?

Mr. LYON.—Objected to as leading and calling for a conclusion of the witness, and not the best evidence

(Deposition of Arthur G. Willard.)

and not the proper manner of proving the conversation.

A. No, sir.

Q. 123. (By Mr. BLAKESLEE.) At the time that this reamer No. 120 [283—225] was made over on shop order No. 6904, was anything said to you by anybody in the line of instructions for the making of the key built into such reamer, to your knowledge?

Mr. LYON.—Objected to as leading and calling for a conclusion of the witness, incompetent, and not the proper method of proving a conversation and not the proper method of proof.

A. No, sir.

Q. 124. (By Mr. BLAKESLEE.) What, if anything, do you know about the execution of this shop order No. 6904 in the shop, and as to any instructions other than the written shop order which you have examined, if there were any such?

A. I don't know of any.

Q. 125. During the period commencing a week or two prior to the commencement of making over this reamer No. 120 and ending with the actual commencement of work upon such order 6904, did you have any conversation with anybody concerning any modification of the construction of the Wilson under-reamer?

Mr. LYON.—Objected to as not the proper method of proof.

A. There had been a number of conferences prior to that time.

(Deposition of Arthur G. Willard.)

Q. 126. (By Mr. BLAKESLEE.) Who was present at such conferences?

A. It is pretty hard to say. Maybe Mr. Wilson and myself would be together. There might be Mr. Wilson and Mr. W. W. Wilson, and might be E. C. Wilson and C. E. Wilcox and myself.

Mr. LYON.—Move to strike from the answer and exclude from consideration all that portion of the answer following the words “It is pretty hard to say,” on the ground that the same is merely a guess and thought of the witness and not stated as a fact, and incompetent.

Mr. BLAKESLEE.—We consent to the striking out of the answer.

Q. 127. Let me ask you, Mr. Willard, if, during the time, namely, the period commencing about two weeks prior to the commencement [284—226] of the working over or making over of this reamer No. 120 and ending at a time when this work was well under way, whether during this period of time you were present when anybody discussed modifying the construction of the Wilson under-reamer as it was then made, and this question is as to whether you were present, only.

Mr. LYON.—The question is objected to as leading, in so far as it attempts to fix the date or dates, and not the proper method of proof.

A. Yes, sir.

Q. 128. (By Mr. BLAKESLEE.) Do you remember anyone else that was present at any such discussion during that time?

(Deposition of Arthur G. Willard.)

Mr. LYON.—Same objection.

A. No, sir.

Q. 129. (By Mr. BLAKESLEE.) Do you remember anything said during that period by anyone with reference to the modification of the construction of the Wilson under-reamer?

Mr. LYON.—Same objection.

A. Mr. Wilson was working at the draughting board and he called my attention to the fact that we could, by boring out the mouth of the reamer a little larger,—he could make a tee bar much heavier and stronger than we had used heretofore; that was some two or three weeks prior to the changing over of the reamer.

Q. 130. (By Mr. BLAKESLEE.) Did anything else occur about that time, that you recollect, pertinent to the business of the Wilson under-reamer?

Mr. LYON.—Same objection, inasmuch as it is leading as to the date of such occurrence, the date being one of the material facts in this case.

A. About that time the Wilson & Willard Manufacturing Company received a letter from a man named Williams of McKittrick, ordering [285—227] an old-style slotted tee bar, and it seemed remarkable that a man would want that type of a tee bar inasmuch as they had not been manufactured for two years prior to that time.

Q. 131. (By Mr. BLAKESLEE.) Do you know whether any record was made in the records of the Wilson & Willard Manufacturing Company as to this order from Mr. Williams? A. Yes, sir.

(Deposition of Arthur G. Willard.)

Q. 132. Can you turn among the records present of the Wilson & Willard Manufacturing Company to any entry covering such order?

A. The records of that date should show.

Q. 133. Please inspect the records that are present and point to any such entry if you can find it.

A. It is not here.

Q. 134. I show you two slips of yellow paper, which I have withdrawn from an envelope, and ask you if you know anything about them.

A. It is a shop order of the Wilson & Willard Manufacturing Company for a 12½ inch slotted tee bar, to be shipped to McKittrick, California.

Q. 135. Did you ever see those slips of paper before? A. Yes, sir.

Q. 136. When for the first time?

A. During January, 1911.

Q. 137. Where?

A. At the shop of the Wilson & Willard Manufacturing Company.

Q. 138. Do you know anything about the matters further, about the matters referred to on those slips?

A. I know that Mr. Wilson wrote a letter to Mr. Williams asking him about the slotted tee bar, and also his opinion of it.

Q. 139. Do you know anything about any shop matters connected with the matter of these slips?  
[286—228]

A. None other than the order was filled.

Q. 140. Do you know what the letter K after the word foreman signifies?



(Deposition of Arthur G. Willard.)

A. It stands for Knapp, the foreman.

Q. 141. What does "E. C. W." stand for?

A. E. C. Wilson.

Mr. BLAKESLEE.—Let it be noted the witness has just been referring to the shop order slip of the Wilson & Willard Manufacturing Company contained in the envelope endorsed "Wilson Exhibit Pacific Iron Works Order of January 26, 1911."

Q. 142. I show you what purports to be a letter on the letter paper of the Pacific Iron Works dated January 28, 1911, and signed "Pacific Iron Works, H. S. Williams, Manager," and ask you if you ever saw that before.

A. Yes, sir.

Q. 143. When did you first see it?

A. January, 1911. Mr. Wilson called my attention to it upon receipt of the letter.

Q. 144. Did Mr. Wilson say anything else to you at that time?

A. He made the remark, he says, "Could it be possible that the slotted tee bar"—"Could it be possible to make the slotted tee bar strong enough," or words to that effect.

Q. 145. Was it about this time that Mr. Wilson was working at the board?

Mr. LYON.—Objected to as leading.

A. The same day.

Mr. BLAKESLEE.—Let it be noted that the witness has been just referring to Wilson Pacific Iron Works Letter of January 28, 1911.

Q. 146. Prior to the commencement of the work

(Deposition of Arthur G. Willard.)

upon shop order 6904 for making over the reamer No. 120, had you ever seen a sketch [287—229] of a single-piece key for an under-reamer?

Mr. LYON.—Objected to as leading.

Q. 147. (By Mr. BLAKESLEE.) Prior to the same time mentioned in the last question had you ever seen any written memoranda letter or the like describing or attempting to describe or in any way disclosing or referring to a single-piece key for under-reamers?

Mr. LYON.—Objected to as leading.

A. No, sir.

Q. 148. (By Mr. BLAKESLEE.) Prior to the same period of time mentioned in the two questions preceding, had you ever heard of a single-piece key for under-reamers like that which was built into reamer No. 120 when it was made over?

Mr. LYON.—Objected to as leading.

A. No, sir.

Q. 149. (By Mr. BLAKESLEE.) Do you know who had charge of receiving and opening of the mail of the Wilson & Willard Manufacturing Company during the years 1908 and 1909?

A. Myself or W. W. Wilson.

Q. 150. During those two years did you ever see any letter containing an order from anyone for an under-reamer accompanied by a sketch of a single-piece key for under-reamers?

Mr. LYON.—Objected to as leading.

A. Not that I remember.

Q. 151. (By Mr. BLAKESLEE.) Prior to the

(Deposition of Arthur G. Willard.)

commencement of the changing over of this Wilson reamer No. 120, do you know whether Mr. Robert E. Bole turned in any orders to the Wilson & Willard Manufacturing Company for any under-reamers?

A. He turned one, in particular; the one he sold to the Sunset-Monarch Oil Company for a Wilson under-reamer,  $9\frac{5}{8}$  inch, with 10-inch cutters. [288—230]

Q. 152. How did he turn it in?

A. By mail.

Q. 152½. What did it call for?

A. It called for a  $9\frac{5}{8}$ -inch Wilson under-reamer, extra set of cutters for 10-inch, and twelve Bole pumps and a Bole casing spear.

Q. 153. Do you remember anything else about that order or accompanying that order?

Mr. LYON.—Objected to as incompetent, not the best evidence, it appearing from the testimony of the witness that the said order was in writing and demand has been made for the production of the original of such order.

A. There was some suggestion regarding the changing of the Wilson under-reamer.

Q. 154. (By Mr. BLAKESLEE.) Do you remember what that suggestion was about?

A. I do not, excepting that it referred to the holding means, the means of holding the tee bar, and the spring, in place. I don't remember whether it was to change the key, pins or blocks or what, but there was some suggestion made for changing the method of holding the tee bar and spring.



(Deposition of Arthur G. Willard.)

Q. 155. You testified this order was sent in and counsel for Bole insists it was a written order. Have you anything further to say?

A. It was received through the mail.

Q. 156. Do you know whether any part of that order was entered up in the books of the Wilson & Willard Manufacturing Company?

A. It is all entered.

Q. 157. When did you last see that order, which you say was sent in through the mail?

A. I don't know.

Q. 158. Have you attempted since that order was sent in to locate whatever was sent in?

A. I looked up the shop records. [289—231]

Q. 159. Did you find any such order?

A. I found the order for the pumps and spear.

Q. 160. Could you find any written requisition or order from Mr. Bole? A. No, sir.

Q. 161. Do you know where such written order or requisition, if there was one, went?

A. No, sir.

Q. 162. When did you attempt to find any such written order sent by Mr. Bole?

A. I guess two or three years ago.

Q. 163. Long before this interference contest was instituted? A. Yes, sir.

Q. 164. How did you happen to look for it at that time?

A. There was some discussion took place as to who was the inventor of this key, and R. E. Bole claimed to have made a sketch of the single-piece

(Deposition of Arthur G. Willard.)

key and that this sketch was part of that order. And I tried to find the original order and was unable to do so.

Q. 165. Do you remember when Mr. Bole made this claim?

A. He made the claim a number of times.

Q. 166. When did he first make such claim?

A. It was sometime after this, 1911—after we adopted the single-piece key.

Q. 167. How many Wilson reamers of the single-piece key type had been used before he made that claim, roughly speaking?

A. Almost from the time the key was adopted, Mr. Bole claimed to be the inventor of that key; soon after the key had been adopted.

Q. 168. To whom did he make such claim?

A. He made it to me, for one.

Q. 169. Did you ever hear him make it to anyone else?

A. There may have been some of the boys in the shop present, but that is common talk among shopmen, to make assertions like that. [290—232]

Q. 170. How long after making such claim did Mr. Bole continue in attendance in the shop of the Wilson & Willard Manufacturing Company where these Wilson under-reamers with the 1-piece key were made? A. A year and a half afterwards.

Q. 171. Referring to such records of the Wilson & Willard Manufacturing Company as are here, can you find any evidence of such order for the 10-inch reamer and casing spear as you have stated Mr. Bole

(Deposition of Arthur G. Willard.)

sent in, the 9 $\frac{5}{8}$ -inch reamer with the 10-inch cutters, and the casing spear? A. Yes, sir.

Q. 172. Please refer to the records and point it out. A. (Witness indicates.)

Mr. BLAKESLEE.—Witness indicates binder folio No. 437 and No. 438, which have been copied into the record, being orders of the Sunset Monarch Oil Company, dated September 18th and September 19th, 1908, respectively.

Q. 173. What do you know about the making of these entries?

A. The entries were made by W. W. Wilson.

Q. 174. When did you first see such entries?

A. September, 1908.

Q. 175. From September, 1908, until the time after the 1-piece key had been adopted in the manufacture of the Wilson under-reamer, did Mr. Bole ever refer to any single-piece key for under-reamers?

Mr. LYON.—Objected to as leading and calling for a conclusion of the witness, and not a statement of fact; and not the proper method of proof.

A. No, sir.

Q. 176. (By Mr. BLAKESLEE.) During that period of time did he ever make any claim such as you say he made after the Wilson [291—233] reamer had been changed in construction to include this 1-piece key?

Mr. LYON.—Same objection.

A. Not to my knowledge.

Q. 177. (By Mr. BLAKESLEE.) Do you know

(Deposition of Arthur G. Willard.)

whether any of the records of the Wilson & Willard Manufacturing Company covering the period of time from the commencement of the business of the company up until the time when the Wilson reamer had been standardized to include the use of this single one-piece key were destroyed?

Mr. LYON.—Objected to as leading and not the proper method of proof, and on behalf of Bole we protest against the grossly leading character of the examination of this witness. He is evidently a friendly witness to the party Wilson, and testifies frankly.

A. No, sir.

Q. 178. (By Mr. BLAKESLEE.) What was the occasion, if you know, of the termination of the relations between Mr. Bole and the Bole Pump Company business and the Wilson & Willard Manufacturing Company?

A. The Bole Pump account with the Wilson & Willard Manufacturing Company.

Q. 179. And of Mr. Bole? A. The account.

Q. 180. What transpired with respect to the account which caused such termination?

A. Demand was made on Mr. Bole for settlement of the account of the Wilson & Willard Manufacturing Company.

Q. 181. Do you know what the amount of the claim was when that demand was made?

A. Between eight and ten thousand dollars.

Q. 182. When was this demand made?

(Deposition of Arthur G. Willard.)

A. December—November or December, 1912, I think.

Q. 183. Do you remember what resulted from such demand? [292—234]

A. It was finally settled.

Q. 184. In what manner?

A. By the Wilson & Willard Manufacturing Company accepting a certain per cent of the account.

Q. 185. Were you present when any such final settlement was entered into? A. Yes, sir.

Q. 186. Who else was present, if anyone?

A. Mr. Bole was present.

Q. 187. Anyone else?

A. Mr. W. W. Wilson may have been present, but I am not positive.

Q. 188. Do you remember anything that transpired in connection with such final settlement?

Mr. LYON.—Objected to on the ground that whatever was done at such time was done, as it appears from the record, in effecting a compromise of pending litigation between the party Bole and the Wilson & Willard Manufacturing Company, and resulted in a settlement which was reduced to writing, and any negotiation leading up to such settlement was privileged and cannot be shown in any litigation between the parties, and inasmuch as such contract of settlement was in writing the terms thereof must be proven by the writing and not by parol testimony, parol testimony being incompetent to alter, vary or change the terms of such settlement; and upon the further ground that it is irrelevant and immaterial



(Deposition of Arthur G. Willard.)

to the issues of this interference, and cannot tend to prove or enlighten any of the tribunals which are to pass upon this case as to who is or was, in fact, the prior inventor of the subject matter in controversy. And again on behalf of Bole we protest against the incumbering of the record with a mass of incompetent, irrelevant and immaterial matter.

Mr. BLAKESLEE.—Counsel for Bole seems to persist in both testifying [293—235] and brief writing, and this is not the proper time, we insist, for such diligence.

A. There was a contract drawn up and signed by Mr. Bole and Mr. E. C. Wilson.

Q. 189. What was the nature of that contract, if you remember?

Mr. LYON.—Same objection as to the preceding question.

A. R. E. Bole was to pay a certain sum of money within a given time, and he was to have a certain length of time in which to remove his material.

Q. 190. (By Mr. BLAKESLEE.) Did you see that paper signed? A. Yes, sir.

Q. 191. Did both parties sign it? Both Mr. Bole and the Wilson & Willard Manufacturing Company?

A. Yes, sir; I think so.

Q. 192. Do you remember anything that transpired leading up to this compromise or settlement and calling for such compromise?

Mr. LYON.—Objected to as heretofore, the same objection as noted to the two preceding questions.

(Deposition of Arthur G. Willard.)

A. I did everything in my power to bring a settlement about.

Q. 193. (By Mr. BLAKESLEE.) Why was it necessary to compromise the matter?

Mr. LYON.—Same objection.

A. Well, we believed at that time that our account was more than Bole's material was worth.

Q. 194. (By Mr. BLAKESLEE.) Why didn't Bole pay you the full amount of the indebtedness?

Mr. LYON.—Same objection.

A. He claimed he could not.

Q. 195. (By Mr. BLAKESLEE.) What do you mean by Bole's material?

A. Material which he used in the construction of the Bole pump.

Q. 196. Were any representations made by Mr. Bole at that time [294—236] as to his worth or assets?

Mr. LYON.—Same objection.

A. He may have made some, but I don't remember them.

Q. 197. (By Mr. BLAKESLEE.) Did you or the company then take steps at that time to inquire of Mr. Bole as to his worth or assets?

Mr. LYON.—Same objection.

A. We knew where the stock was located in Bakersfield and Coalinga and at the Wilson & Willard Manufacturing Company in Los Angeles, and we were able to judge for ourselves.

Q. 198. (By Mr. BLAKESLEE.) Was it your conclusion that he could not pay the full amount of

(Deposition of Arthur G. Willard.)

the indebtedness?

Mr. LYON.—Same objection.

A. I, for one, was willing for the settlement.

Q. 199. (By Mr. BLAKESLEE.) Did you conclude that he could not pay the full amount?

Mr. LYON.—Same objection.

A. Yes, sir.

Q. 200. (By Mr. BLAKESLEE.) Do you believe now he could have paid the same, the full amount?

Mr. LYON.—Same objection.

A. No, sir; that is in addition to the material.

Q. 201. (By Mr. BLAKESLEE.) Do you think he could have otherwise?

Mr. LYON.—Same objection.

A. I could not say that I do.

Q. 202. (By Mr. BLAKESLEE.) Was it your belief at that time when you were willing that this settlement should be effected that that was the best settlement you could obtain from Mr. Bole?

Mr. LYON.—Same objection.

A. I believed so at the time.

Q. 203. (By Mr. BLAKESLEE.) Do you remember anything that was said at the time of that final settlement by any party present— [295—237]

Mr. LYON.—Same objection.

A. There was a good many things said, but I don't remember any particular thing.

Q. 204. (By Mr. BLAKESLEE.) Do you remember whether any reference was made at that time to the subject of the key for under-reamers?



(Deposition of Arthur G. Willard.)

Mr. LYON.—Same objection, leading and suggestive.

A. No, sir.

Q. 205. (By Mr. BLAKESLEE.) Don't you remember anything?

Mr. LYON.—Same objection.

A. I don't remember anything, no, sir.

Q. 206. (By Mr. BLAKESLEE.) Was anything done at that settlement, if you remember, in the actual squaring up of the account, in accordance with the compromise?

Mr. LYON.—Same objection.

A. Just a cash consideration. There was nothing else taken into account.

Q. 207. (By Mr. BLAKESLEE.) Do you know whether any receipt was given for that cash consideration?

Mr. LYON.—Same objection.

A. I suppose there was.

Q. 208. (By Mr. BLAKESLEE.) Did you see it given?

Mr. LYON.—Same objection.

A. I think so.

Q. 209. (By Mr. BLAKESLEE.) Do you know whether there was any other paper passed between the parties at that time other than this receipt for said payment?

Mr. LYON.—Same objection.

A. I think the receipt was all. The contract had been drawn up prior to that time.

(Deposition of Arthur G. Willard.)

Q. 210. (By Mr. BLAKESLEE.) And the contract was the receipt?

Mr. LYON.—Same objection. [296—238]

A. No, I think Mr. Bole was given a receipt in full when he made the final payment.

Q. 211. (By Mr. BLAKESLEE.) You think there was a contract besides that?

Mr. LYON.—Same objection.

A. I think so; yes, sir.

Q. 212. (By Mr. BLAKESLEE.) Are you reasonably sure as to that?

Mr. LYON.—Same objection.

A. Quite positive.

Q. 213. (By Mr. BLAKESLEE.) This settlement, to the best of your memory, was finally effected when?

Mr. LYON.—Same objection.

A. March, 1913.

Q. 214. (By Mr. BLAKESLEE.) Did Mr. Bole continue his calls at the shop of the Wilson & Willard Manufacturing Company after that settlement?

A. No, sir; he was there from time to time, but he was not there daily.

Q. 215. Do you know what his next business move was?

A. He made arrangements to go to the Union Tool Company to manufacture his pumps.

Q. 216. Do you know whether prior to that time he had ever had any relations with the Union Tool Company?

Mr. LYON.—Objected to as irrelevant, immaterial

(Deposition of Arthur G. Willard.)

to the issues of this interference, and needlessly incumbering the record.

A. No, sir. He had no business relation with them. He was acquainted with Mr. Double, the president and general manager.

Q. 217. (By Mr. BLAKESLEE.) What is, and was then, and has been, so far as you know, the business of the Union Tool Company mentioned?

A. Manufacturing oil well tools.

Q. 218. How long has it manufactured oil well tools, so far as you know? [297—239]

A. Fifteen or sixteen years.

Q. 219. In what field does it operate?

A. In the oil business.

Q. 220. In what general territory?

A. Wherever oil fields are located. They ship tools all over the world, I guess.

Q. 221. Does it manufacture anything that the Wilson & Willard Manufacturing Company has been turning out, anything of the same kind of tool?

A. Manufactures all the same types; that is, manufactures under-reamers and elevators and casing spears, manufactures a general line.

Q. 222. Then that company is a competitor of the Wilson & Willard Manufacturing Company?

A. Yes, to a certain extent.

Q. 223. How long has it been such competitor?

A. Ever since the existence of the Wilson & Willard Manufacturing Company.

Q. 224. What connection has Mr. Edward Double with that company?

(Deposition of Arthur G. Willard.)

A. President and general manager, I understand.

Q. 225. Is there any litigation pending, that you know of, involving the interests of the Union Tool Company and the interests of the Wilson & Willard Manufacturing Company and individuals associated with both interests?

A. Yes, sir; there are several suits.

Q. 226. What do those suits involve, what kind of devices? A. Under-reamers and rotaries.

Q. 227. Do you know when the first of said suits was instituted? A. In 1908, something like that.

Q. 228. What did that suit concern, what kind of apparatus?

A. Wilson under-reamers. [298—240]

Q. Who brought the suit?

A. Union Tool Company and others.

Q. 230. Who was the defendant?

A. The Wilson & Willard Manufacturing Company.

Q. 231. That suit is still pending?

A. Yes, sir.

Q. 232. There is other litigation involving the under-reamer brought by the Wilson & Willard Manufacturing Company interests against the Union Tool Company interests, is there not?

A. Yes, sir.

Q. 233. Also litigation between the same interests and allied interests? A. Yes, sir.

Q. 234. Involving the rotary well-drilling apparatus, is there not? A. Yes, sir.

Q. 235. Has the business of the Wilson & Willard

(Deposition of Arthur G. Willard.)

Manufacturing Company any particular competitor as to under-reamers?

A. The Union Tool Company.

Q. 236. That is its chief competitor?

A. Yes, sir.

Q. 237. Do you know Charles E. Wilcox of East Bakersfield, now in Los Angeles? A. Yes, sir.

Q. 238. With what company is he connected?

A. The Wilson & Willard Manufacturing Company.

Q. 239. How long has he been connected with that company? A. Three or four years.

Q. 240. Was he connected with that company in 1911 when reamer No. 120 was made over, as you have testified? A. Yes, sir. [299—241]

Q. 241. Do you know whether he was familiar with the construction, at that time, of the Wilson under-reamer, as made at that time? A. Yes, sir.

Q. 242. Was Mr. Robert E. Bole familiar with the construction of the Wilson under-reamer at that time? A. Yes, sir.

Q. 243. And Mr. Knapp, at that time, superintended all of the shop work upon the Wilson under-reamers, did he?

Mr. LYON.—Objected to as leading and calling for a conclusion of the witness, and not stating the facts. And while I have not been objecting lately to the leading questions, we continue our protest against counsel leading the witness as he has been and now is.

Mr. BLAKESLEE.—We shall expect counsel to



(Deposition of Arthur G. Willard.)

object if he feels he should object to any question, and it is to be noted that as to one recent question in particular counsel permitted the answer to be made up because the facts were undisputed and of record.

Mr. LYON.—Then if the facts are undisputed and of record, why incumber the record?

Mr. BLAKESLEE.—They are not all of record before the Patent Office, but they are deemed a material part of the examination of this witness.

Mr. LYON.—Then the examination of this witness should be conducted according to the rules of evidence.

Mr. BLAKESLEE.—Then we shall expect counsel to object when he feels the rules are being departed from. I will withdraw the question.

Q. 244. Who was the foreman, the general foreman of the shop of the Wilson & Willard Manufacturing Company at the time reamer No. 120 was made over, and under whom the Wilson reamers were constructed? A. W. G. Knapp. [300—242]

Q. 245. I now show you two attached blue-prints without showing you the title of the same as an exhibit, and ask you if you are familiar with the contents of the same? A. Yes, sir.

Q. 246. What do they represent generally?

A. The slotted tee bar and 1-piece key and parts of the Wilson under-reamer.

Q. 247. Have you ever seen these blue-prints or copies of the same before? A. Yes, sir.

Q. 248. When and where, and how early?

(Deposition of Arthur G. Willard.)

A. During the year of 1911, at the office of the Wilson & Willard Manufacturing Company.

Q. 249. How were they used, and for what purpose?

A. Used as records of the size of the tee bar and key.

Q. 250. For what purpose?

A. Used in the manufacture of the Wilson underreamers.

Mr. BLAKESLEE.—Let it be noted that the witness has just been referring to Wilson Exhibit Wilson Reamer Shop Blue-prints of Tracings of May 6, 1911, and June 2, 1911.

Q. 251. I show you a brown piece of paper with red and black characters and lines thereon, concealing the exhibit description, and I will ask you if you have ever seen the same before.

A. Not to my knowledge.

Mr. BLAKESLEE.—Let the record show that the witness refers to Wilson Exhibit Wilson Reamer Tee and Key Sketch of 1911.

Q. 252. To your knowledge did the relations between Mr. E. C. Wilson and Mr. Robert E. Bole continue the same after the settlement in the first part of 1913? A. I believe not.

Q. 253. What change in such relations was there?  
[301—243]

A. A difference of opinion on different subjects.

Q. 254. What was Mr. Bole's attitude to Mr. Wilson at and since that time?

A. I guess the feelings are mutual.

(Deposition of Arthur G. Willard.)

Q. 255. How would you describe them generally?

A. They were not throwing bouquets at one another.

Q. 256. What have your personal relations with Mr. Bole been since that time?

A. Just the same as prior to that time.

Q. 257. By that you mean friendly?

A. He is a personal friend of mine; yes, sir.

Q. 258. You have testified that so far as you know none of the records of the Wilson & Willard Manufacturing Company have been destroyed. Please state to the best of your knowledge and belief anything that you know with regard to any changes in the condition of the records of the Wilson & Willard Manufacturing Company of any nature whatsoever, resulting from loss or misplacement or fire or other accident or act of any party.

Mr. LYON.—Objected to as assuming facts not appearing from the testimony of the witness.

Q. 259. (By Mr. BLAKESLEE.) Have there been any such?

Mr. LYON.—And as calling for a conclusion of the witness.

A. There has been no loss through fire, and there is none by misplacement, to my knowledge.

Q. 260. (By Mr. BLAKESLEE.) During that time Mr. Bole had access to the various parts and premises of the Wilson & Willard Manufacturing Company. Do you know whether he had access to the records of the Wilson & Willard Manufacturing Company in their private and general office?



(Deposition of Arthur G. Willard.)

Mr. LYON.—Objected to as leading and calling for a conclusion of the witness. [302—244]

A. I suppose he had access if he wanted it.

Q. 261. (By Mr. BLAKESLEE.) No steps were taken to prevent him referring to any records or papers of the company?

Mr. LYON.—Objected to as leading.

A. No, sir.

Q. 262. (By Mr. BLAKESLEE.) What have you to say with regard to Mr. Wilson's position with relation to this 1-piece key adopted for the construction of the Wilson under-reamer, in so far as you have ever heard him make any statement with regard thereto, or any act of invention connected therewith?

Mr. LYON.—Objected to as calling for a conclusion of the witness and an expression of opinion of the witness, and incompetent, and not the proper method of proof, and a mere self-serving statement at the most, unless it is contended that such statement was made in the presence of the party Bole, or those in interest with him.

A. He has claimed a number of times to be the inventor of all improvements of the Wilson under-reamer.

Mr. LYON.—Move to strike the answer from the record, and exclude it from consideration upon the grounds stated in the objection to the question, it being a mere conclusion of the witness and not attempting to state the conversation or conversations, and upon each of the other grounds stated in the objections to the questions.

(Deposition of Arthur G. Willard.)

Q. 263. If Mr. Bole, prior to the adoption of the 1-piece key for the Wilson under-reamer had any contention or claimed to have had anything to do whatsoever with providing or producing that key, or suggesting that key, and had made any such statement to you or in your presence, do you believe that you would remember the same at this time?

A. No, sir; I don't. [303—245]

Q. 264. Did anybody, to your knowledge, ever make any suggestions of any features of change of the Wilson under-reamer which were incorporated in that reamer prior to the adoption of this 1-piece key? A. Not to my knowledge.

Q. 265. Then, if Mr. Bole had made any such suggestion prior to that time, do you not consider it probable that the suggestion would have stood out in your memory?

Mr. LYON.—Same objection, and as hypothetical and incompetent.

A. No, sir.

Q. 266. (By Mr. BLAKESLEE.) For what reason?

Mr. LYON.—Same objection.

A. Mr. Bole has a number of inventions of his own, and he has good suggestions along all lines and a number of times he has suggested improvements for one tool or another, not only once but repeatedly.

Q. 267. (By Mr. BLAKESLEE.) Do you know whether Mr. Bole has any issued patents for improvements of his own?

(Deposition of Arthur G. Willard.)

Mr. LYON.—Objected to as irrelevant and immaterial.

A. A number of them.

Q. 268. (By Mr. BLAKESLEE.) Do you know how many of these are in use, things for which he has received patents?

Mr. LYON.—Same objection.

A. I know he has a number of applications pending. I only know of the one issued patent. That is for the Bole pump.

Q. 269. Do you know how many articles Mr. Bole has on the market at the present time?

Mr. LYON.—Objected to as irrelevant, immaterial.

A. He is making the Bole pump and the Bole cage, Bole folding-cot.

Q. 270. (By Mr. BLAKESLEE.) Do you know whether he has any extensive business in any of these devices? [304—246]

Mr. LYON.—Objected to as irrelevant and immaterial, and calling for a conclusion of the witness; incompetent, and no foundation laid.

A. I understand he has a good business with the Bole pump.

Q. 271. (By Mr. BLAKESLEE.) Do you know anything about Mr. Bole's invention of the Bole pump which he has patented?

Mr. LYON.—Objected to as irrelevant, immaterial.

A. No, sir.

Q. 272. (By Mr. BLAKESLEE.) Do you know

(Deposition of Arthur G. Willard.)

when he invented it?

Mr. LYON.—Same objection.

A. Yes, sir.

Q. 273. (By Mr. BLAKESLEE.) Do you know when and where Mr. Bole worked out this pump which he patented?

A. He was working for the Bakersfield Iron Works.

Mr. LYON.—Same objection.

Q. 274. (By Mr. BLAKESLEE.) Was anybody else at that time working upon a pump of that kind?

Mr. LYON.—The same objection.

A. There were a number of oil well-pumps came out about the same time.

Q. 275. (By Mr. BLAKESLEE.) Was anybody working upon a pump at that time in connection with Mr. Bode, if you know?

Mr. LYON.—Same objection.

A. Not in connection with Mr. Bole that I know of.

Q. 276. (By Mr. BLAKESLEE.) Who was working on a pump at the same time that you know?

Mr. LYON.—Same objection.

A. I was working on a pump, and a man by the name of Barnes was working on a pump.

Q. 277. (By Mr. BLAKESLEE.) What kind of a pump was Barnes working on?

Mr. LYON.—Objected to as irrelevant and immaterial, and on behalf [305—247] of Bole we again protest against the incumbering of the record with a mass of matter which is absolutely immaterial to

(Deposition of Arthur G. Willard.)

the issues of this interference.

A. Liner pump.

Q. 278. (By Mr. BLAKESLEE.) What kind of a pump is Mr. Bole's?

A. Liner pump.

Q. 279. Do you know whether they were working together at the same time, Mr. Barnes and Mr. Bole?

A. Mr. Bole was working for Mr. Barnes. Mr. Barnes was foreman of the Bakersfield Iron Works at the time.

Q. 280. Who was working on the liner pump first, Barnes or Bole?

Mr. LYON.—Objected to as irrelevant and immaterial.

A. I don't know.

Q. 281. (By Mr. BLAKESLEE.) Did you ever see the liner pump of Mr. Barnes?

A. Yes, sir.

Q. 282. How did it compare with the pump of Mr. Bole which he patented?

Mr. LYON.—Same objection as last noted, and incompetent, and not the best evidence.

A. Both were practically the same except Mr. Bole held his liners in with molten metal, lead or babbitt, and Mr. Barnes' liners were held with collars.

Q. 283. (By Mr. BLAKESLEE.) As far as you know Mr. Bole's invention consisted in pouring babbitt metal in to hold the liners in, instead of using collars?

Mr. LYON.—Objected to as incompetent, irrele-



(Deposition of Arthur G. Willard.)

vant and immaterial, and not the best evidence, and the witness is not qualified to answer the question.

A. Mr. Bole's patent claimed in his patent he mentioned the metal for holding the liners. [306—248]

Mr. LYON.—Move to strike the answer from the record and exclude it from consideration, and again protest against the incumbering of the record with a mass of immaterial matter.

Q. 284. (By Mr. BLAKESLEE.) Do you know when Mr. Bole applied for that patent?

A. No, sir.

Q. 285. Do you know whether Mr. Barnes had tried anything else for holding in the liners?

Mr. LYON.—Objected to as incompetent, irrelevant and immaterial to the issues of this interference.

A. He tried liquid.

Q. 286. (By Mr. BLAKESLEE.) And Mr. Bole substituted babbitt metal?

Mr. LYON.—Objected to as incompetent, irrelevant and immaterial, leading, and without the issues of this interference.

A. I don't know whether Mr. Bole used the babbitt before Mr. Barnes used the liquid or not.

Q. 287. (By Mr. BLAKESLEE.) Do you know what the liquid was that Mr. Barnes was putting back of his liner?

A. The oil.

Q. 288. You don't know of any other patent

(Deposition of Arthur G. Willard.)

which was ever issued to Mr. Bole than this pump patent?

Mr. LYON.—Objected to as immaterial and irrelevant.

A. No, sir; I know he has a number of applications.

Q. 289. From your knowledge of the business of the Wilson & Willard Manufacturing Company and the oil well tools in general, which do you consider the best device for holding the lower end of the spring in the Wilson under-reamer, the 2-piece key, the block and screws, or the pins, or the single-piece key? A. The single-piece key.

Q. 290. For what particular reasons? [307—249]

A. It is easier to assemble and easier to take apart, stronger, more durable, and gives less trouble to the operator.

Q. 291. Is anything particular used in withdrawing the key for the Wilson under-reamer?

A. I believe they use some kind of a tapered pin.

Q. 292. When did you first see such a device?

A. Soon after they made the first under-reamer with the single-piece key.

Q. 293. Do you know who suggested that device?

A. No, sir. [308—250]

OFFICE OF RAYMOND IVES BLAKESLEE,  
California Building,

Los Angeles, Cal., Wednesday, June 24, 1914.

10 o'clock A. M.

This being the time and place to which the further

(Deposition of Arthur G. Willard.)

taking of proof on behalf of Wilson was continued, proceedings are now resumed.

Present:—FREDERICK S. LYON, Esq., for Bole.  
RAYMOND IVES BLAKESLEE, Esq.,  
for Wilson.

A. G. WILLARD, recalled for further direct examination, by consent, prior to the cross-examination, testified as follows:

Direct Examination.

(By Mr. BLAKESLEE.)

Q. 294. How frequently was it the custom, as among yourself, Mr. E. C. Wilson, Mr. W. W. Wilson, Mr. Robert E. Bole and Mr. William G. Knapp and others, acquainted with the general conduct of the business of the Wilson & Willard Manufacturing Company, during the last few years you were an officer of that company, to confer as to the various matters of the shop and business end of the affairs for that company?

Mr. LYON.—Objected to as assuming that there was any custom in this regard whatsoever. The witness has not so testified, nor is there any testimony or proof of any such custom on the record.

Mr. BLAKESLEE.—The record clearly shows the testimony of this witness.

A. Several conferences, from time to time, regarding various subjects, except the management of the Wilson & Willard Manufacturing Company, which was conducted by Mr. E. C. Wilson and A. G. Willard, exclusively. [309—251]

Q. 295. Do you remember any such conference



(Deposition of Arthur G. Willard.)

taking place with respect to the under-reamer construction at or about the time when you say this first Wilson single-piece key under-reamer was finished at the shop of the Wilson & Willard Manufacturing Company?

Mr. LYON.—Objected to as leading, as the question particularly sets forth the date, the date being one of the material questions at issue.

A. There were several conferences about that time in which Mr. R. E. Bole and Mr. E. C. Wilson and Mr. W. W. Wilson and Mr. W. G. Knapp took part.

Q. 296. (By Mr. BLAKESLEE.) You remember Mr. Charles E. Wilcox, a salesman of the company, being present at any such conference?

Mr. LYON.—Objected to as leading.

A. I do not.

Q. 297. (By Mr. BLAKESLEE.) Do you remember anything that was said at any such conference with respect to the changing over or modifying the construction of the Wilson under-reamer?

Mr. LYON.—Objected to as leading and calling for a conclusion of the witness and not the proper method of proof in proving a conversation.

A. I remember Mr. Wilson's suggesting about the enlarging the slotted tee bar.

Q. 298. (By Mr. BLAKESLEE.) Do you remember anything further in this connection?

Mr. LYON.—The same objection.

A. No; I don't know as I do.

Q. 299. (By Mr. BLAKESLEE.) Are you able to state positively and conclusively that you were

(Deposition of Arthur G. Willard.)

not present at such a conference when the question of the adoption of the single-piece key of the Wilson under-reamer was discussed?

Mr. LYON.—Objected to as leading and calling for a conclusion [310—252] of the witness, incompetent, not the proper method of proof.

A. No, sir.

Q. 300. (By Mr. BLAKESLEE.) That is, I understand you are not positive but what you were—that is, you won't say absolutely that you were not. Is that correct?

Mr. LYON.—The same objection.

A. Yes, sir.

Q. 301. (By Mr. BLAKESLEE.) About the time of making over the Wilson under-reamer to turn out the first single-piece key Wilson under-reamer, what part of the shop work were you most particularly interested in? That is, what devices as manufactured there at that time most particularly concerned yourself?

Mr. LYON.—Objected to as assuming facts not appearing from the record and leading.

A. The Bole pump, the Willard circulating-head and possibly the Willard-Wilcox rotary.

Q. 302. (By Mr. BLAKESLEE.) What products of the shop was Mr. E. C. Wilson more particularly interested in at that time?

A. Wilson under-reamer, the Wilson casing elevator and the Wilson casing spear.

Q. 303. When you looked up the shop records, as you have testified, of two or three years ago, to

(Deposition of Arthur G. Willard.)

attempt to locate whatever was sent in, as you have testified, with the order of Mr. Bole for a 9 5/8 inch Wilson under-reamer, extra set of cutters for 10-inch and 12 Bole pumps, and the Bole casing spear, and you couldn't find any written requisition or order from Mr. Bole, did you find anything else connected with these matters?

A. The records of the Wilson & Willard Manufacturing Company showed that an order had been received for the under-reamer, pumps and casing spear. The original order, however, was missing.

Q. 304. Did you find in the records of the Wilson & Willard Manufacturing Company when you made such search anything whatsoever [311—253] showing the receipt of any such order for any such devices or things from Mr. Bole?

Mr. LYON.—Objected to as leading.

A. No, sir.

Q. 305. (By Mr. BLAKESLEE.) You have testified that accompanying that order, or in connection with that order, there was some suggestion regarding the changing of a Wilson under-reamer. When you made this search which you have testified two or three years ago, did you find in the records of the Wilson & Willard Manufacturing Company anything pertaining in any manner to any such suggestion?

Mr. LYON.—Objected to as leading.

A. No, sir.

Q. 306. (By Mr. BLAKESLEE.) Did you ever make any other search for such order from Mr.

(Deposition of Arthur G. Willard.)

Bole or for any paper or other thing, letter, sketch or the like, pertaining to any such order?

A. I may have.

Q. 307. Do you remember making any further search among the records of the Wilson & Willard Manufacturing Company? A. I am not positive.

Q. 308. And do you remember having at any time ever seen any such thing pertaining to any such order after the time you say the order was received?

Mr. LYON.—Objected to as leading.

A. No, sir.

Q. 309. (By Mr. BLAKESLEE.) Do you remember approximately the date at which Mr. Charles E. Wilcox entered the employment of the Wilson & Willard Manufacturing Company?

A. No, sir.

Q. 310. Can you give an approximate date at which you first saw Mr. Wilcox in the shop or office of the Wilson & Willard Manufacturing Company?

A. September or October, 1910 or 1911. I remember it was in the fall. [312—254]

Q. 311. Which year do you think it was?

A. 1910.

Q. 312. How frequently did you see Mr. Wilcox in that shop after that time for the next few years?

A. Almost every day unless he was out of the city on business. He had charge of the Taft store, was up there for several months.

Q. 313. What did he sell at the Taft store?

A. Wilson under-reamers and elevators, principally.

(Deposition of Arthur G. Willard.)

Q. 314. To your knowledge how many Wilson under-reamers, conservatively stated, has Mr. Wilcox sold for the Wilson & Willard Manufacturing Company? A. To date?

Q. 315. Yes. To your knowledge, of course. The last year you may not know.

A. That is a pretty hard question to answer.

Q. 316. I don't care within a hundred or fifty. Put an outside figure at which you can safely give it.

Mr. LYON.—We object on the ground that it is evident that it would be a mere guess or conclusion on the part of the witness, and on the further ground that it is irrelevant and immaterial.

A. It would be purely a guess.

Q. 317. (By Mr. BLAKESLEE.) Well, do you know of Mr. Wilcox having sold any Wilson under-reamers? A. Yes, sir.

Q. 318. And during what years?

A. 1911, 1912 and 1913.

Q. 319. When did you first hear that Mr. Bole had filed an application for patent which is involved in these proceedings?

A. At the time Mr. Bole filed the application.

Q. 320. Did you ever mention having received such information to Mr. E. C. Wilson?

Mr. LYON.—Objected to as leading. [313—255]

A. Yes, sir.

Q. 321. (By Mr. BLAKESLEE.) At how early a date?

A. I don't just remember when I first mentioned the fact.



(Deposition of Arthur G. Willard.)

Q. 322. Was it before the patent to Mr. Bole issued, do you remember?

Mr. LYON.—Objected to as leading.

A. Yes, sir.

Q. 323. (By Mr. BLAKESLEE.) As to this one particular order you have testified about, namely, the one which you say Mr. Bole sold to the Snuset-Monarch Oil Company for the 9-inch Wilson reamer and 10-inch cutters, do you remember who was opening the mail of the Wilson & Willard Manufacturing Company at the time you say that order was received?

Mr. LYON.—Objected to as having been already answered by the witness and having been fully gone into on direct examination when this witness was on the stand on June 19, 1914.

A. W. W. Wilson or myself.

Q. 324. (By Mr. BLAKESLEE.) Was either of you opening most of the mail at about that time, or did you equally divide this work?

A. I usually opened the mail if I was there.

Q. 325. For how long a period of time?

A. Until the arrival of E. C. Wilson from Bakersfield.

Q. 326. When you opened up the mail and there were any orders in it, what was your general custom at that time as to such orders?

A. Have them entered up.

Q. 327. And what was done with the original instructions or orders received through the mail?

A. The instruction was to file all written orders



(Deposition of Arthur G. Willard.)

with the shop order.

Q. 328. Who attended to such filing?

A. W. W. Wilson.

Q. 329. Then do I understand that both you and Mr. Wilson were [314—256] accustomed to handle or inspect or file, between you, any such orders received during that period? A. Yes, sir.

Q. 330. And how often did Mr. W. W. Wilson open the mail during that general period of time?

A. It is pretty hard to say. I don't know as there were any particular instructions who was to open the mail or who was not. It just happened; that is all. There was no objection to W. W. Wilson opening the mail.

Q. 331. Was it then, if I am correct, a matter of who happened to be first at the office or who happened to be at the office when the mail came in as to who opened it?

Mr. LYON.—Objected to as leading.

A. Yes, sir.

Q. 332. (By Mr. BLAKESLEE.) The orders came in by mail at various parts of the day during the years 1908 and 1909?

Mr. LYON.—Objected to as leading.

A. There were two deliveries—morning and afternoon.

Q. 333. (By Mr. BLAKESLEE.) And orders came in occasionally in the afternoon?

A. Yes, sir.

Q. 334. You are considerable of a baseball enthusiast? A. Yes, sir.

(Deposition of Arthur G. Willard.)

Q. 335. Were you during those years?

A. Yes, sir.

Q. 336. And were you occasionally at afternoon sessions of the ball game during those years?

A. Yes, sir.

Q. 337. I show you a pencil sketch on a yellow sheet of paper, concealing the written matter on the sketch, and ask you if you know what it shows.

Mr. LYON.—Objected to as leading, the witness not having qualified [315—257] to answer the question, it not being shown that the witness has ever seen the particular sketch before, and the history of the sketch shown in this record shows that it could not have been seen by him unless it was shown him prior to his taking the stand here this morning.

A. It is the sketch of a lever.

Q. 338. (By Mr. BLAKESLEE.) Have you ever seen that sketch before? A. I don't know.

Q. 339. To the best of your recollection have you ever seen it before?

Mr. LYON.—You mean this particular one?

Mr. BLAKESLEE.—Yes.

A. I don't know.

Q. 340. Have you seen this sketch since the beginning of the taking of testimony in this case?

A. No, sir.

Q. 341. What kind of a lever is that, if you know?

A. It could be used for a number of things.

Q. 342. Was there ever any such lever used in the shop of the Wilson & Willard Manufacturing

(Deposition of Arthur G. Willard.)

Company for any purpose, to your knowledge?

Mr. LYON.—Objected to as leading.

A. I have seen levers of that description; yes, sir.

Q. 343. (By Mr. BLAKESLEE.) What were they used for?

A. Used in connection with the Wilson under-reamer.

Q. 344. And for what purpose?

A. Prying up the spring and inserting the key.

Q. 345. What was such lever applied to in this case? A. Applied in the slot of the under-reamer.

Q. 346. And what was it applied against?

A. A washer on the tee bar underneath the spring.

[316—258]

Q. 347. When did you first see such a lever at that shop? A. 1907.

Q. 348. And when after that, if at all?

A. There may be some around there yet.

Q. 349. Just mention the years in which you recollect seeing such levers, or such a lever, at that shop. A. 1907 to 1913.

Mr. BLAKESLEE.—That is all. Let it be noted that the witness has been referring in discussing the pencil sketch and yellow paper to Wilson Exhibit W. W. Wilson Key Extractor Sketch.

Cross-examination.

(By Mr. LYON.)

Q. 350. What, Mr. Willard, was the purpose of the projection or hump which I now mark with an X on the sketch last shown you?

A. Used as a heel on the lever.

(Deposition of Arthur G. Willard.)

Q. 351. These levers which you say you saw which conformed in a general way to this sketch were used with the old-style Wilson reamers for lifting the spring of the reamer? A. Yes, sir.

Q. 352. During what operation? The assembling or removal? A. The assembling.

Q. 353. And for what purpose was the spring lifted by means of these levers in such reamer or reamers? A. To insert the keys.

Q. 354. You mean by the "key" in your last answer the plug which was held in by the—the block or plug which is held in by screws, do you?

A. They could be used with either the key type or block type.

Q. 355. Was this type of lever used with both of these types for the purpose of assembling the reamer? A. You could use them. [317—259]

Q. 356. Do you know whether such levers were ever used with either of such types or under-reamers for that purpose?

A. They were used in the shop.

Q. 357. For the purpose of assembling the under-reamers? A. Yes, sir.

Q. 358. Do you refer to the double-key type of under-reamer in these last answers?

A. The double-key type, yes, sir.

Q. 359. And they also used this general type of lever in assembling the plug and screw type of Wilson reamer? A. Yes, sir.

Q. 360. Do you remember what kind of a tool was furnished with these reconstructed reamers like

(Deposition of Arthur G. Willard.)

120 which was shipped to the Norbeck & Nicholson Company at Edgemont, South Dakota?

A. You refer to the tool that was used to—

Q. 351. To lift the single-piece key.

A. No, sir.

Q. 362. Do you remember what kind of a single-piece key, or what shape it was, that was used in that reconstructed reamer No. 120 as it was shipped to the Norbeck & Nicholson Company?

A. I don't remember the shape of the key, except that it was in one piece.

Q. 363. In September, 1908, Mr. Robert E. Bole left the Wilson & Willard Manufacturing Company to go to Maricopa, California, to take charge of the shop of the Sunset-Monarch Oil Company, did he?

A. Yes, sir.

Q. 364. And afterwards returned to the Wilson & Willard Manufacturing Company?

A. Yes, sir.

Q. 365. And it was while Mr. Bole was away in September, 1908, and had gone north for this purpose, that he sent in this order for the shipment to the Sunset-Monarch Oil Company of this 9 $\frac{5}{8}$ -inch [318—260] Wilson reamer and extra set of 10-inch cutters and Bole spear, was it? A. Yes, sir.

Q. 366. And that order was received before Mr. Bole's return to the Wilson & Willard Manufacturing Company, was it? A. Yes, sir.

Q. 367. And you gave such order to Mr. W. W. Wilson to make out the necessary shop order from?

A. Do you refer to the order received from R. E. Bole?



(Deposition of Arthur G. Willard.)

Q. 368. Yes. A. I don't know.

Q. 369. If I understand your testimony correctly, Mr. Willard, you were not as vitally interested in the under-reamer business of the Wilson & Willard Manufacturing Company as was E. C. Wilson or his brother W. W. Wilson. Is that correct?

A. Yes.

Q. 370. And W. W. Wilson was at the time of the receipt of this order from R. E. Bole the representative of his brother E. C. Wilson in the shop of the Wilson & Willard Manufacturing Company. Is that correct?

Mr. BLAKESLEE.—Objected to as calling for a conclusion.

A. Yes, in a way. That is partly correct. About that time the business had grown so that it was necessary to employ help in the office, and Mr. Wilson sent his brother there and, naturally, he had Mr. E. C. Wilson's interest at heart.

Q. 371. (By Mr. LYON.) This order contained some kind of a sketch of a key device for an under-reamer as ordered, did it? A. Yes, sir.

Q. 372. Such order also was for a Wilson under-reamer of the slotted tee bar, was it?

A. Yes, sir. [319—261]

Q. 373. You were not at that time manufacturing the Wilson under-reamer with slotted tee bar and 2-piece key, were you? A. Yes, sir.

Q. 374. The order for this particular under-reamer with the single-piece key, as sent in by Mr. Bole and received at the Wilson & Willard Manufac-



(Deposition of Arthur G. Willard.)

turing Company's shop between the 12th and 20th of September, 1908, called for a larger diameter tee-bar than you had been furnishing with such  $9\frac{5}{8}$ -inch Wilson under-reamers at that time. Is that correct?

Mr. BLAKESLEE.—Objected to as assuming definitely the date of the receipt of this order which has not been testified to by the witness.

A. I don't remember.

Q. 375. (By Mr. LYON.) I believe you have stated that you do not now remember definitely just what this sketch of the key device with that order comprised or showed. Is that correct?

A. Yes.

Q. 376. At this time in September, 1908, when this order to ship to the Sunset-Monarch Oil Company this  $9\frac{5}{8}$  reamer was received by the Wilson & Willard Manufacturing Company from Robert E. Bole, what connection, if any, did you have with the under-reamer business? Please explain it.

A. I was in charge of the shop of the Wilson & Willard Manufacturing Company, which at that time was manufacturing all of the Wilson under-reamers.

Q. 377. Did you have anything whatever to do with the design or any authority to make any changes in design of the Wilson under-reamer at that time?

A. No, sir.

Q. 378. When any orders or suggestions were received by the Wilson & Willard Manufacturing Company of either special types [320—262] or

(Deposition of Arthur G. Willard.)

construction of the Wilson under-reamers or suggested changes therein, what was done with them?

A. Referred to E. C. Wilson.

Q. 379. It was part of your custom, then, at that time to report to Mr. E. C. Wilson in regard to such under-reamer business and to send to him for his personal attention any special matters which arose in connection with the under-reamers?

A. Yes, sir. They were sent to him or called to his attention by letter.

Q. 380. Have you any distinct recollection as to whether you personally gave this order received from Robert E. Bole for the Sunset-Monarch Oil Company, and to which we have referred, to Mr. E. C. Wilson or sent it to him at Bakersfield?

A. No, sir.

Q. 381. If I understand your testimony correctly, however, following your general custom, and such order being special and out of the general line, some notice of such order either by sending the order itself or calling particular attention to it would have been given to E. C. Wilson on account of his special interest in the under-reamer business. Is that correct?

Mr. BLAKESLEE.—Objected to as calling merely for a conclusion and not inquiring into facts, and calling merely for a guess of the witness.

A. Yes, sir.

Q. 382. (By Mr. LYON.) Do you remember what time in 1908 Mr. E. C. Wilson came to Los Angeles and took charge of the work of the Wilson

(Deposition of Arthur G. Willard.)  
& Willard Manufacturing Company? --

A. No, sir.

Q. 383. If I understand you correctly, your recollection as to dates does not enable you to positively fix the year 1908 as the time when Mr. E. C. Wilson did remove from Bakersfield to Los [321—263] Angeles, and did take charge of the affairs of the Wilson & Willard Manufacturing Company here.

A. Yes, sir.

Q. 384. In your answer to question No. 66, which question referred to Robert E. Bole, you say, "He was on a friendly basis with everyone in the shop, or at least in the control and management of the shop, during 1911 and 1912"? You said "A. With the management, yes." Was there, then, some friction or jealousy or feeling of some kind between the pump gang employed upon the manufacture of Bole pumps and the other workmen employed upon the under-reamers and other devices in the shop of the Wilson & Willard Manufacturing Company at that time? A. Yes; there was some friction.

Q. 385. Have you any knowledge of the records of the Wilson & Willard Manufacturing Company since your sale of your stock in such company to E. C. Wilson? A. No, sir.

Q. 386. Then you do not know whether at the present time such records are complete?

A. No, sir.

Q. 387. Approximately when was it that you sold your stock in the Wilson & Willard Manufacturing Company to E. C. Wilson?

(Deposition of Arthur G. Willard.)

A. April 1, 1913.

Q. 388. And that was how long after Mr. Bole left the Wilson & Willard Manufacturing Company?

A. A couple of months, I guess.

Q. 389. E. C. Wilson is still owing you a large sum of money on notes given you as consideration for the sale of your stock to him in the Wilson & Willard Manufacturing Company, is he?

A. Yes, sir.,

Q. 390. And the dates of maturity of such notes extend over a very considerable period in the future?

[322—264] A. Yes, sir.

Q. 391. The Wilson & Willard Manufacturing Company are manufacturing the so-called Wilcox & Willard rotary, or rotary drilling apparatus, on a royalty basis? A. Yes, sir.

(By consent of counsel an adjournment is now taken until half past one of this day and at this place.) [323—265]

OFFICE OF RAYMOND IVES BLAKESLET  
California Building,

Los Angeles, Cal., Wednesday, June 24, 1914.

2 o'clock P. M.

This being the time and place to which the further taking of proof on behalf of Wilson was continued, proceedings are now resumed.

Present:—FREDERICK S. LYON, Esq., for Bole  
RAYMOND IVES BLAKESLEE, Esq.,  
for Wilson.

(Deposition of Arthur G. Willard.)

ARTHUR G. WILLARD, recalled.

Cross-examination (Continued.)

(By Mr. LYON.)

Q. 392. You are to receive one-half such royalty?

A. Yes, sir.

Q. 393. You stated, I believe, that you had no authority in 1908 to make any changes in the Wilson under-reamer; is that correct?

A. I had no authority to make changes without the consent of E. C. Wilson.

Q. 394. Do you remember what kind of an under-reamer this Sunset-Monarch Oil Company order sent in by Mr. Bole, to which you have referred in your cross-examination, was filled with?

A. The same type reamer we were manufacturing at that time

Q. 395. That was the 2-piece key type?

A. Yes, sir.

Q. 396. How long after that was it that the Wilson & Willard Manufacturing Company reverted back to the block-and-screw plugs [324—266] type of reamer in the manufacture of the Wilson reamer?

A. Without referring to the shop records I would say from one to two years.

Q. 397. Do you mean that they continued to manufacture the 2-piece key device type of reamers in 1909?

A. It is barely possible; I could not tell without referring to the records.

Mr. BLAKESLEE.—We move that the answer of



(Deposition of Arthur G. Willard.)

the witness be stricken from the record and excluded from consideration as it is apparently merely a guess.

Q. 398. What reason was there why this order of the Sunset-Monarch Oil Company for this 9 $\frac{5}{8}$ -inch under-reamer was not filled with an under-reamer corresponding to the sketches or sketch contained in Mr. Bole's letter, and such order, if you know?

Mr. BLAKESLEE.—Objected to as assuming a matter not testified to.

A. The suggested changes did not appear to get the approval of Mr. E. C. Wilson.

Mr. BLAKESLEE.—We move that this answer be stricken from the record and excluded from consideration, as it is apparent from the testimony of the witness that no definition has ever been given as to any such suggested changes, therefore it is not capable of use in any respect by the testimony in this case.

Q. 399. (By Mr. LYON.) To refresh your recollection, Mr. Willard, do you remember any conversation that you had with Mr. Bole after Mr. Bole's return from Maricopa, and after the receipt of this order from Mr. Bole for the shipment of this 9 $\frac{5}{8}$  inch under-reamer to the Sunset Monarch Oil Company in which conversation you stated to Mr. Bole that you had submitted his order and sketch to Mr. E. C. Wilson?

A. I remember very distinctly having a conversation with Mr. [325—267] Bole regarding the fulfillment of the order, but I don't remember whether I told him I had referred the sketch to Mr. E. C. Wil-



(Deposition of Arthur G. Willard.)

son. I know Mr. Bole was very much disappointed at the time because the reamer was not shipped as he had ordered it, he so informed me, and said that in all probability the reamer would be returned.

Q. 400. You are not prepared to state at this time that in that conversation you did not state to Mr. Bole that you had sent his letter and the sketch to Mr. Wilson, are you? A. No, sir.

Q. 401. Why is a removable key device or means for readily removing the spring-actuated rod or tee bar requisite in the Wilson under-reamer?

A. It is necessary in order to simplify the taking apart or assembling of the reamer.

Q. 402. When is it necessary or desirable to take apart such under-reamer?

A. In changing the cutters or substituting new ones or dressing the old ones.

Q. 403. Is that frequently required in the use of such under-reamer? A. Yes, sir.

Q. 404. Based upon your experience both in the operation of under-reamers and in the manufacture thereof, would you say that such Wilson under-reamer with the 1-piece key device, as for example Wilson Exhibit Wilson Reamer No. 255, here on the floor before you, would be a practical tool if, and assuming that, the 1-piece key could not be removed?

A. No, sir.

Q. 405. You have had some experience, have you, with the use of under-reamers?

A. Yes, sir. [326—268]

Q. 406. To what extent?

(Deposition of Arthur G. Willard.)

A. Manufactured them for the last twelve or fourteen years, have two or three patents of my own covering under-reamers.

Q. 407. Have you had any opportunity for observing the actual use of such tools in operation?

A. I have seen them used, yes, sir.

Q. 408. Are you prepared to say positively, Mr. Willard, that the sketch of the key device which accompanied Mr. Bole's letter and order for the 9 $\frac{5}{8}$  inch under-reamer for the Sunset Monach Oil Company in September, 1908, and to which we have already referred several times in this cross-examination, was not a sketch of a single-piece key substantially identical with the single-piece key in Wilson's Exhibit Wilson Reamer No. 255, and illustrating in substantially the same relations as such key exists in such reamer exhibit?

Mr. BLAKESLEE.—Objected to as calling for a mere repetition of testimony, the witness having already testified that he does not know what the sketch showed.

Mr. LYON.—That is not this question.

Mr. BLAKESLEE.—If there were such a sketch.

A. No, sir.

Q. 409. (By Mr. LYON.) Early in January, 1911, Mr. Robert E. Bole and Mr. E. C. Wilson had a number of conversations with reference to the changing of the means for supporting the tee bar in the under-reamer body of the Wilson reamer, did they?

A. Not that I know of.

Q. 410. Would the records of the Wilson & Wil-

(Deposition of Arthur G. Willard.)

lard Manufacturing Company show when Mr. Charles E. Wilcox entered the employ of the Wilson & Willard Manufacturing Company? A. Yes, sir.

Q. 411. What record would so show? [327—269]

A. The ledger would show.

Mr. LYON.—We demand the production of such ledger to be produced in connection with the cross-examination of Mr. Fahnestock.

Mr. BLAKESLEE.—We will consider the demand.

Q. 412. (By Mr. LYON.) You had knowledge in March, 1913, that E. C. Wilson was making the application for patent involved in this interference and upon this 1-piece key device for the Wilson reamer, had you? A. Yes, sir.

Q. 413. And it was prior to the time that Mr. Wilson made such application that Mr. Bole informed you that he had made an application for patent thereon, wasn't it? A. Yes, sir.

Q. 414. You talked with Mr. E. C. Wilson after Mr. Bole had told you he had made such application and during the time of the taking of the testimony in the under-reamer suit of the Union Tool Company, et al, versus the Wilson & Willard Manufacturing Company, about the time that Mr. Robert E. Bole gave his testimony therein, and discussed or mentioned to Mr. E. C. Wilson that Robert Bole had filed or was about to file such an application upon such 1-piece key device for the Wilson under-reamer?

A. I don't remember the exact date.

(Deposition of Arthur G. Willard.)

Mr. BLAKESLEE.—In view of the answer of the witness we ask that this answer and the previous answer be stricken from the record and excluded from consideration, it being evident that the witness does not remember when he told Mr. Wilson about the proposed Bole application, and therefore this testimony is nothing more than a guess on the part of the witness.

Q. 415. (By Mr. LYON.) This conversation last referred to was had between Mr. E. C. Wilson and yourself during the taking of the testimony in said under-reamer suit? [328—270]

A. I don't remember that, either.

Q. 416. After Mr. E. C. Wilson had ordered prepared the application for patent involved in this interference, you called at the office of Mr. Raymond Ives Blakeslee and had an interview with him, did you? A. Yes, sir.

Q. 417. And you told Mr. Blakeslee at that time that you understood that E. C. Wilson was filing an application on such single-piece key device for the Wilson under-reamer and that if they expected any assistance from you in proving that Mr. E. C. Wilson was the inventor of such 1-piece key device for the Wilson under-reamer, they would be mistaken, as it was always your belief that Robert E. Bole was the inventor thereof, did you?

A. I don't remember the conversation; no, sir.

Q. 418. Did you not have such a conversation, substantially of that substance, with Mr. Blakeslee?

A. The substance of any conversation I had with

(Deposition of Arthur G. Willard.)

Mr. Blakeslee was to the effect that I would be of very little assistance in helping him to prove that Mr. Wilson was the inventor of the key. That is the substance of the conversation.

Q. 419. Did you not tell Mr. Robert E. Bole you had had such a conversation?

A. It is possible.

Q. 420. Did you not tell Mr. Robert E. Bole you had told Mr. Blakeslee it had always been your belief that he, Robert E. Bole, was the inventor of such 1-piece key device for the Wilson under-reamer?

A. No, sir.

Q. 421. Did you not tell Robert E. Bole on more than one occasion that down deep in your heart you believed he, Robert E. Bole, to be the original and first inventor of such 1-piece key [329—271] device for the Wilson under-reamer? A. No, sir.

Q. 422. I show you a bundle of papers marked Bole's Exhibit Wilson & Willard Manufacturing Company Monthly Reports of Bole Pump Company account for identification, and ask you if you have ever seen these before, or the duplicates or triplicates, or originals. thereof. A. Yes, sir.

Q. 423. What are they?

A. Monthly reports of the Bole Pump Account.

Q. 424. Do you know the circumstances under which they were made up?

A. At the suggestion of Mr. Bole.

Q. 425. Under whose direction?

A. Under mine, I guess.

Q. 426. A copy of these was given to Mr. Bole,



(Deposition of Arthur G. Willard.)

a copy to you and a copy to Mr. E. C. Wilson?

A. A copy to Mr. Bole, one to me, and I think a copy was kept for the shop records.

Q. 427. Do you know these to be true and correct statements of such account during the time and dates mentioned in such accounts?

A. I believe them to be.

Q. 428. Did you so believe them to be at the time they were made out? A. Yes, sir.

Mr. LYON.—We offer this in evidence in connection with the cross-examination of this witness, Bole's Exhibit Wilson & Willard Monthly Reports of Bole Pump Company Account, the same being the same accounts and reports identified by the witness Laura Dauphine. I show you nine more papers and ask you if you ever saw these or [330—272] the originals or duplicates of them. If so, state what they are.

Mr. BLAKESLEE.—We caution the witness to carefully examine each of these, if he is to identify distinctly as to the full showing of each.

Mr. LYON.—We object to counsel for Wilson prompting the witness.

A. Yes, sir; these are the monthly reports of the Bole Pump Company account, being May, 1908, to August, 1909, and September 1, to 30, 1909.

Q. 429. Were these made up under your directions? A. Yes, sir.

Q. 430. And were true and correct statements of such account at the time rendered?

A. To the best of my belief; yes, sir.



(Deposition of Arthur G. Willard.)

Mr. LYON.—We ask that this be marked Bole's Exhibit Willard Cross-Examination Bole Pump Company Account Reports, and they are offered in evidence in connection with the cross-examination of this witness.

(The document so offered in evidence is marked as requested, together with the title of the court and cause and the date upon which said exhibit was offered in evidence.)

Q. 431. (By Mr. LYON.) You stated in answer to question No. 188 that the settlement between Mr. Bole and the Wilson & Willard Manufacturing Company was, by means of a contract in writing, and now I show you a paper and ask you if you know what the same is.

A. It is an agreement between Robert E. Bole and the Wilson & Willard Manufacturing Company for the settlement of what is known as the Bole Pump Company account.

Q. 432. That is the contract you referred to in the answer to which I have just directed your attention?  
[331—273] A. Yes, sir.

Mr. LYON.—Let the record show that the instrument handed to the witness was Bole's Exhibit W. W. Wilson Cross-examination Exhibit 1 for identification.

Q. 433. Were you familiar with the financial condition of the Wilson & Willard Manufacturing Company in December, 1912, and January and February, 1913? A. Yes, sir.

Q. 434. Is it a fact that said company was, like

(Deposition of Arthur G. Willard.)

many other concerns engaged in the oil well business, pressed for ready cash funds during those months?

A. I don't know without looking up the records.

Q. 435. Do you know what occasioned the pressing of Mr. E. C. Wilson for a settlement by Mr. Bole, of the Bole Pump Company account, in December, 1912, and January, 1913? If so, please state.

Mr. BLAKESLEE.—Objected to as calling for a conclusion of the witness. The witness has testified that the account was in arrears. That is the usual reason for pressing an account.

Mr. LYON.—We object again to counsel for Wilson interrupting the cross-examination of this witness and making suggestions under the guise of objections as not proper procedure, and we call particular attention to such conduct on the part of Wilson.

Mr. BLAKESLEE.—We will let the rational interruptions of counsel for Wilson be compared with the many and multitudinous objections which manifestly were without proper foundation upon any fair and proper consideration of the rules of evidence and which added materially to the expense of the party Wilson in this case, and can only be considered as further evidence of the animus developed in the proofs taken for the party Wilson.

A. Mr. Wilson was in charge of the office at the time and looked after the collections. He stated to me on a number of [332—274] occasions, that he did not approve of Mr. Bole's methods of doing business, and that the account as it appeared on the books

(Deposition of Arthur G. Willard.)

was more than the Wilson & Willard Manufacturing Company could afford to allow to remain there, and that he intended to insist upon a settlement of the account.

Q. 436. (By Mr. LYON.) During all that time the Wilson & Willard Manufacturing Company records show that the Wilson & Willard Manufacturing Company had full access to all the records of the Bole Pump Company account, including the stock of merchandise on hand, did it? A. Yes, sir.

Q. 437. On Tuesday, the 16th of June, 1914, you were at the baseball game at Los Angeles, California, between the so-called Venice Tigers and the Angels of the Pacific Coast League in company with Mr. Robert E. Bole, were you—that is a week ago yesterday? A. Yes, sir.

Q. 438. And while watching such game you had some conversation with Mr. Bole in regard to this Sunset-Monarch Oil Company order for this 9 5/8 inch under-reamer sent in by Mr. Bole in September, 1908, did you? A. It is barely possible.

Q. 439. In such conversation Mr. Bole referred to your talk with Mr. Blakeslee, Mr. Wilson's attorney, to which conversation I have already alluded in cross-examination this afternoon, did he?

A. I think it was discussed; yes, sir.

Q. 440. Did you not at that time say to Mr. Bole that "down deep in my heart I always believed that you were the inventor of the 1-piece key"?

A. No, sir.

Mr. BLAKESLEE.—Objected to as having been

(Deposition of Arthur G. Willard.)

already testified to [333—275] by the witness this afternoon.

Q. 441. And didn't Mr. Bole ask you the following question after you went up and had that talk with Blakeslee he must have thought he was in bad, and you answered "Yes, I guess so"? A. No, sir.

Q. 442. You swear positively you did not make that statement at that time? A. Yes, sir.

Q. 443. Can you state what the conversation was that you had with Mr. Bole that day in reference to such conversation with Mr. Blakeslee?

A. As I have previously testified I told Mr. Bole that I had told Mr. Blakeslee that I would be of little assistance to either one of them in proving who was the inventor of this key.

Q. 444. Is that all you said in that conversation?

A. Along that same line of talk.

Q. 445. Referring now to the so-called 2-piece key under-reamers that are manufactured by the Wilson & Willard Manufacturing Company for or on account of E. C. Wilson, do you remember when the first of such under-reamers were manufactured by said Company? A. 1907.

Q. 446. Were they sold in 1907?

A. Part of them; yes, sir.

Q. 447. How long was such manufacture and sale continued? A. For a year or so after that?

Q. 448. Those under-reamers comprise a hollow body? A. Yes, sir.

Q. 449. Inside the hollow body are a rod or tee bar, movable within the hollow body? A. Yes, sir.

(Deposition of Arthur G. Willard.)

Q. 450. The movement of said rod or tee bar, within the [334—276] hollow body was to permit the expansion and contraction of the cutters for bits?

A. Yes, sir, for the raising or lowering of the bits.

Q. 451. And such under-reamers embraced cutters substantially like the cutters of the Wilson Exhibit Wilson Reamer 255? A. Yes, sir.

Q. 452. And the means for causing the expansion of the cutters in the said rod or tee bar was substantially the same as in said reamer No. 255?

A. Yes, sir.

Q. 453. And substantially as shown in the drawings of the application of Elihu C Wilson, filed in the United States Patent Office March 18, 1913, serial No. 755170, a certified copy of which, certified to by the acting commissioner of patents, I now hand you?

A. Yes, sir.

Q. 454. Comprising a spring, acting upon the said rod or tee bar to move it in one direction, that is, upward within the body? A. Yes, sir.

Q. 455. And, what means were provided in such under-reamers for the confining of the spring at one end? A. A key.

Q. 456. Such key was made in two pieces, was it?

A. During the years of 1907 and 1908; yes, sir.

Q. 457. And the upper piece of such key had a wedge action to raise the spring and engage with the hollow body, and the lower portion of the key, as well as the upper portion of the key, were combined in the slot in the rod or tee bar? A. Yes, sir.

Q. 458. The lower portion of such key in such



(Deposition of Arthur G. Willard.)

under-reamer [335—277] had an extension set in the bore of the hollow body?

A. Yes, sir; on one side.

Q. 459. It was to prevent the lateral displacement of the key on that side?

A. That lower half of the key; yes, sir.

Q. 460. During the year 1910, the debit balance of the Bole Pump Company account to the Wilson & Willard Manufacturing Company reached the sum of practically \$10,000, did it?

A. I could not say offhand. I know at about that time it was that the Bole Pump Company account was way behind.

Q. 461. I show you recapitulation sheet for the month of June, 1910, showing such balance to be \$9,907.89, said sheet forming a part of Bole's Exhibit Wilson & Willard Manufacturing Company monthly reports of Bole Pump Company account, and ask you to verify the preceding question and answer.

A. Yes, sir.

Q. 462. At that time you had a strike on at the Wilson & Willard Manufacturing Company?

A. Yes, sir.

Q. 463. Prior to that time Mr. Robert E. Bole had been absent for some time in the field and you called him back from San Diego and he took personal charge of this Bole Pump Company account and matters, and this debit balance was reduced from practically \$10,000 down to a credit balance of \$33.87, as shown by the monthly report or statement for



(Deposition of Arthur G. Willard.)

March, 1911. Is that correct? Please look at such statement, as it forms a part of this exhibit, and answer me. A. Yes, sir; that is correct.

Q. 464. You sold out your interest in this Bole pump business to Mr. Bole in 1912?

A. Yes, sir. [336—278]

Q. 465. It is a fact that the Wilson & Willard Manufacturing Company requested and encouraged Mr. Bole to manufacture and increase the line of his stock during the months succeeding the sale of your interest to Mr. Bole, the purpose thereof being to keep the business and keep the shop of the Wilson & Willard Manufacturing Company and certain portions of the workmen busy? A. Yes, sir.

Q. 466. And it is a fact that one of the reasons why you sold your interest in the Wilson & Willard Manufacturing Company to E. C. Wilson was that you did not think he had treated Mr. Robert E. Bole right in the manner in which he had forced the Bole Pump Company account? A. No, sir.

Q. 467. Did you not so state to Mr. Robert E. Bole? A. Not that I remember.

Q. 468. Will you state that you did not so state? A. No, sir.

Q. 469. Then this agreement between Mr. E. C. Wilson and Mr. Bole had nothing to do, nothing whatever to do with your sale of your stock in the Wilson & Willard Manufacturing Company?

A. No, sir.

Q. 470. You have nothing but the most friendly feeling toward Mr. E. C. Wilson? A. No, sir.

(Deposition of Arthur G. Willard.)

Q. 471. You are here voluntarily as a witness and without subpoena? A. Yes, sir. [337—279]

Redirect Examination.

(By Mr. BLAKESLEE.)

Q. 472. What efforts were made by the Wilson & Willard Manufacturing Company during 1912 to induce Mr. Bole to continue the Bole Pump Company business as a branch of that of the Wilson & Willard Manufacturing Company?

A. Mr. Wilson wrote Mr. Bole several letters making suggestions as to how he thought that the Bole Pump Company business should be conducted.

Q. 473. Was Mr. Wilson satisfied with the conduction of the Bole Pump business at that time?

A. No, sir.

Q. 474. Did you consider the Bole Pump Company account a safe account at that time?

A. No, sir.

Q. 475. About that time what was the indebtedness of the Bole Pump Company to the Wilson & Willard Manufacturing Company?

A. About \$10,000.

Q. 476. Did you have any interest in the Bole Pump Company account at that time? A. No, sir.

Q. 477. You had at that time, did you, in the Wilson & Willard Manufacturing Company which pertained to the item of this Bole Pump Company account? A. Yes, sir.

Q. 478. In 1910 did you have any interest in the Bole Pump Company account? A. Yes, sir.

Q. 479. And was this true at the time the Bole

(Deposition of Arthur G. Willard.)

Pump Company account showed a debit to the Wilson & Willard Manufacturing Company of about \$10,000? [338—280] A. Yes, sir.

Q. 480. Was there any guarantee of that account to the Wilson & Willard Manufacturing Company in 1910 when substantially this debit amount appeared against the Bole Pump Company account?

Mr. LYON.—Objected to as leading and calling for a conclusion of the witness, and incompetent and not the best evidence.

A. I personally guaranteed the account.

Q. 481. (By Mr. BLAKESLEE.) Was there any guarantee of the Bole Pump Company account in the year 1912?

Mr. LYON.—Same objection.

A. Not that I know of.

Q. 482. (By Mr. BLAKESLEE.) What did Mr. Bole have to do with the management of the Bole Pump Company affairs in the year 1910?

A. You might say he had complete charge of it.

Q. 483. Did you have anything to do with that management?

A. No, sir; Mr. Bole and I were partners in the affair, but I left the whole thing to Bob.

Q. 484. Who took care of the Bole Pump Company matters when he was absent at San Diego or elsewhere? A. I suppose I did.

Q. 485. He attended to the collection of the accounts receivable of Mr. Bole during 1910, did he?

A. It was all paid into the Wilson & Willard Manufacturing Company and the Bole Pump Com-

(Deposition of Arthur G. Willard.)

pany was given credit for it.

Q. 486. Who took charge of the getting in of such funds receivable? A. E. C. Wilson.

Q. 487. What was Mr. Bole doing during the year 1910 with respect to the management of the Bole Pump Company affairs?

A. He made various trips around the field and sold pumps.

Q. 488. Did he do anything beside act as salesman? [339—281]

A. He superintended the construction of the pumps in the shop.

Q. 489. Did he do any of the work on the pumps?

A. Yes, sir; part of the time during the strike I think Mr. Bole made pretty near all of them.

Q. 490. Did you look after the manufacture of the pumps for the Bole Pump Company at all during the year 1910?

A. I gave it very little of my attention.

Q. 491. Did Mr. Bole have anything to do with the clerical or office end of the Bole Pump Company in 1910? A. He kept in touch with it.

Q. 492. Who took care of the correspondence of the company from the office?

A. E. C. Wilson took care of the correspondence regarding the collections. Mr. Bole and myself took care of the correspondence to the various oil companies, principally Mr. Bole.

Q. 493. After you sold out your interest in the Bole Pump Company, did you consider the Bole Company account a safe one on the books of the

(Deposition of Arthur G. Willard.)

Wilson & Willard Manufacturing Company?

A. Yes, sir.

Q. 494. When did you commence to alter your opinion in this respect, as you have testified.

A. When Mr. Wilson insisted upon a settlement.

Q. 495. What was your attitude as to forcing such a settlement?

A. Well, I don't think I was at all insistent that the account be settled. I thought it would turn out all right; it had heretofore.

Q. 496. During 1912 did Mr. Bole make any representation to you personally as to his worth or the value of his assets?

Mr. LYON.—Objected to as leading, irrelevant and [340—282] immaterial to the issues of this interference, the entire controversy with regard to the Bole Pump Company is clearly irrelevant and immaterial to the issues of this interference.

A. I don't know as he did; I always considered that the stock on hand was worth more than he owed the Wilson & Willard Manufacturing Company.

Q. 497. (By Mr. BLAKESLEE.) What do you think the stock of the Bole Pump Company on hand was, toward the latter part of 1912?

Mr. LYON.—Objected to as incompetent and no foundation laid.

A. Do you mean to the Bole Pump Company or the Wilson & Willard Manufacturing Company?

Q. 498. (By Mr. BLAKESLEE.) The stock on hand, of the Bole Pump Company.

Mr. LYON.—Same objection.



(Deposition of Arthur G. Willard.)

A. The stock on hand of the Bole Pump Company would be worth two or three times as much as to any other concern.

Q. 499. (By Mr. BLAKESLEE.) What would it be worth to the Bole Pump Company at that time?

A. If the Bole Pump Company could have made the material up in pumps and sold them there is no doubt but what they could have paid all they owed the Wilson & Willard Manufacturing Company and more too.

Q. 500. What was the valuation of that material and stock on hand in 1912 in its unworked condition?

A. I would not have paid \$2,000 for all of it.

Q. 501. What was the indebtedness of the Bole Pump Company as you remember it to the Wilson & Willard Manufacturing Company in December, 1912? A. \$10,000.

Q. 502. Have you any further reasons for stating that it was your belief that the Bole Pump Company account was a safe one in [341—283] 1912?

A. As I have stated, the account had reached a debit of some \$10,000 and it had worked out all right without practically any more material on hand than Bole had in 1912.

Q. 503. But from the standpoint of the Wilson & Willard Manufacturing Company, did you think that the Bole Pump Company account was as safe an account in 1912 when it showed a debt to the Wilson & Willard Manufacturing Company of approximately \$10,000 as it was in 1910 when it showed the same indebtedness and also at which time you were a

(Deposition of Arthur G. Willard.)

half owner of such business and a guarantor of the account thereof?

Mr. LYON.—Objected to as hypothetical and argumentative and calling for a conclusion of the witness and incompetent and irrelevant and immaterial.

A. No, sir.

Q. 504. (By Mr. BLAKESLEE.) Do you remember making any statement to Mr. E. C. Wilson within the last month that Mr. Bole had represented to you that in 1912 his worth was substantially \$20,000 or thereabouts?

Mr. LYON.—Objected to as leading, irrelevant and immaterial to the issues of this interference.

A. I don't know, he may have made some such statement. As I said before I believed that the material on hand, if it had been worked up into pumps, Mr. Bole would have been able to clear the account and had considerable stock left.

Q. 505. (By Mr. BLAKESLEE.) That, of course, would assume that he received orders for such pumps? A. Yes, sir.

Q. 506. How with respect to the raising of sufficient funds to work over such material and stock into pumps—in the year 1912, what was your knowledge and belief with respect to the worth of Mr. Bole to enable him to obtain such working capital? [342—284]

Mr. LYON.—Objected to as irrelevant and immaterial to the issues of this interference, incompetent, no foundation laid. The witness is not qualified to answer the question, calling for the mere guess and

(Deposition of Arthur G. Willard.)

conclusion of the witness and the question is also to be objected to on the ground that it involves more than one question or inquiry.

A. I have no way of knowing what Mr. Bole's resources were other than the material on hand.

Q. 507. (By Mr. BLAKESLEE.) Then so far as the safety of this account was concerned in 1912 when it showed a debit of substantially \$10,000, did you know of any assets of Mr. Bole rendering, or tending to render such account safe other than the stock and material of some \$2,000 of the Bole Pump Company?

Mr. LYON.—Objected to as leading, irrelevant, immaterial to the issues of this interference.

A. No, sir.

Q. 508. (By Mr. BLAKESLEE.) Are you prepared to say that Mr. Bole did or did not represent to you in 1912, that is to you, as an officer of the Wilson & Willard Manufacturing Company that his worth approximately \$20,000.00?

Mr. LYON.—Objected to as leading, irrelevant and immaterial to the issues of this controversy.

A. I don't remember of ever asking Mr. Bole for a statement of his account; he may have volunteered information, that his business was worth \$20,000.

Mr. LYON.—We move to strike the answer from the record and exclude it from consideration upon each of the grounds stated in the objection to the question and on the further ground that it is not responsive and is a mere conclusion of the witness, and the guess or belief of the witness, and not a statement of fact.

(Deposition of Arthur G. Willard.)

Q. 509. (By Mr. BLAKESLEE.) Had not Mr. Bole been a friend of [343—285] yours in the year 1912, would or would not you have considered the retention of the Bole Pump Company business a safe business prospect, in view of the lot of stock of material, value to that company, and the amount of his indebtedness as testified to by you?

Mr. LYON.—Objected to as leading, and on each of the grounds stated in the objection to the preceding question and the motion to strike the answer from the record and exclude it from consideration.

A. Most certainly not.

Q. 510. (By Mr. BLAKESLEE.) What was the nature of the settlement between yourself and Mr. Bole when you sold your interest in the Bole Pump Company?

Mr. LYON.—Objected to as not cross-examination irrelevant and immaterial to the issues of this interference.

Mr. BLAKESLEE.—We are not attempting to cross-examine the present witness.

Mr. LYON.—Not redirect examination, and cannot be considered much of anything but cross-examination.

A. The whole thing was settled in about five minutes; we figured what the material was worth and I says to Bob, "I will take so much." And Bob says, "I will give you so much," and I says, "All right, I will take it." And that is all there was to it.

Q. 511. (By Mr. BLAKESLEE.) How was the transaction settled, that is, the nature of the deal, in

(Deposition of Arthur G. Willard.)

closing the transaction? I am not asking you as to the amounts, but merely the nature of the deal in closing the transaction?

Mr. LYON.—Objected to as not redirect examination, irrelevant and immaterial to the issues of this interference. A. The sale was covered by notes.

Q. 512. (By Mr. BLAKESLEE.) Were those ever paid?

Mr. LYON.—Same objection. [344—286]

A. Yes, sir.

Q. 513. (By Mr. BLAKESLEE.) Did anybody outside of yourself have any interest in those notes, or the payment of them? A. Yes, sir.

Q. 514. I will ask you, to avoid prying into your personal affairs, if Mr. E. C. Wilson had any interest in the payment of such notes?

Mr. LYON.—Same objection.

A. No, sir.

Q. 515. (By Mr. BLAKESLEE.) Were those notes paid in full?

Mr. LYON.—Same objection.

A. I agreed to the settlement.

Mr. LYON.—We move to strike the answer from the record and exclude it from consideration on the ground stated in the objection and on the further ground it is not responsive to the question.

Q. 516. (By Mr. BLAKESLEE.) At the time of the settlement or attempted settlement with Mr. Bole in 1913, was this matter of these notes given you by Mr. Bole, taken up between yourself and Mr. Wilson in any manner?



(Deposition of Arthur G. Willard.)

Mr. LYON.—Objected to as not redirect examination, as leading, irrelevant, immaterial to the issues of this interference, and on the further ground that inasmuch as the Bole Company account was compromised and settled, any of the negotiations had between the parties with reference to such compromise, are not admissible in evidence in any litigation between the parties.

Mr. BLAKESLEE.—The hearing of this settlement upon the issues in this controversy must be manifest.

A. The notes did not play any part in the settlement.

Q. 517. (By Mr. BLAKESLEE.) Did they enter at all into any arrangement between yourself and Mr. Wilson?

Mr. LYON.—Same objection.

A. I don't think the notes had anything to do with the [345—287] settlement at all.

Q. 518. (By Mr. BLAKESLEE.) Was anything arranged with regard to those notes between yourself and Mr. Wilson at the time of that settlement?

Mr. LYON.—Same objection.

A. Not that I remember, no.

Q. 519. (By Mr. BLAKESLEE.) Does Mr. E. C. Wilson owe you anything to-day on any note given him by you and which has matured prior to the present date?

Mr. LYON.—Objected to as incompetent and not the best evidence.

(Deposition of Arthur G. Willard.)

A. No. sir.

Q. 520. (By Mr. BLAKESLEE.) Do you remember whether or not you ever stated to anybody at any time that no sketch, so far as you could definitely remember, or surely remember, was enclosed with, or connected with the order for a  $9\frac{5}{8}$  inch reamer, the cutters, the twelve Bole pump, and the casing spear, which you say Mr. Bole delivered to the Wilson & Willard Manufacturing Company as evidenced by the shop orders of 1908, for the Sunset-Monarch Oil Company?

Mr. LYON.—Objected to as leading, and as an apparent attempt to impeach the testimony of the witness produced by the party Wilson, who called him, and who vouches for him, and upon the further ground that even if impeachment were proper, the question is subject to the further objection that the witness is entitled to have the time fixed, and the place fixed, and the name of the party given with whom such alleged conversation was had.

Mr. BLAKESLEE.—Of the two dilemmas in the objection of counsel and the other objection which he would doubtless urge, that counsel would be leading, if we specified the matters he wishes, we prefer to let the question go as it is, and we further disclaim any intention to impeach the witness; and the question, if carefully considered, will be seen not to tend in that direction, [346—288] taking the previous testimony of the witness into consideration.

Mr. LYON.—The statement of counsel is objected to as not proper procedure, unnecessarily encumber-

(Deposition of Arthur G. Willard.)

ing the record, and counsel for Bole protests against such argumentative and purely unnecessary remarks upon the record.

Mr. BLAKESLEE.—If this voice of protest could be heard over the incumbering objections of counsel for Bole, we shall be willing to have it echo when the case is considered. A. No, sir.

Q. 521. Do you recollect ever having made any similar statement or any statement as to doubt on this head, to Mr. E. C. Wilson?

Mr. LYON.—Same objections as noted in the preceding questions.

A. No, sir.

Q. 522. (By Mr. BLAKESLEE.) How certain are you—and I ask this in order that we may know clearly your best recollection on this head, and I am asking these several questions to determine that,—how certain are you as to the nature of this sketch, for instance, as to the paper it was on?

A. I am not certain at all.

Q. 523. Have you any recollection as to the size of that paper? A. No, sir.

Q. 524. Have you any recollection as to the color of that paper? A. No, sir.

Q. 525. Have you any recollection as to the color of the lines of any such sketch? A. No, sir.

Q. 526. Have you any recollection as to the size of the figure or figures or portions of that sketch?

A. No, sir. [347—289]

Q. 527. Are you sure whether that sketch pertained to the under-reamer mentioned in that order,

(Deposition of Arthur G. Willard.)

or to the casing spear mentioned in that order?

Mr. LYON.—Objected to as leading and suggestive and an apparent cross-examination of the witness by the party producing him, who has vouched for him as a witness.

Mr. BLAKESLEE.—If counsel for Bole fails in his cross-examination to get all the evidence and the best evidence that this witness can give before the Patent Office, we must try, as best we can, to get that evidence, and we are trying to do so fairly.

Mr. LYON.—We object to the statement upon the ground that it is not proper procedure and object to counsel leading his own witness and this objection will be understood as being registered to each and every question asked the witness without the necessity of repeating the same specifically on the record.

A. The sketch pertained to the under-reamer, of that I am quite certain, because the order was placed for the under-reamer with the understanding it would be made as per the enclosed sketch. There was no sketch of the Bole casing spear sent with the order and the casing spear was not manufactured until after Mr. Bole's return.

Q. 528. (By Mr. BLAKESLEE.) Can you give any description at all of what that sketch showed, in part or in whole? A. None whatever.

Q. 529. Have you at any time seen that sketch since the time when you say it was received?

A. No, sir.

Q. 530. Is there any manner in which you can fix

(Deposition of Arthur G. Willard.)

the time at which Mr. Bole returned from Maricopa in 1908?

A. Excepting by the shop records. He returned soon after he sent the order, within the next thirty days, I would say. [348—290]

Q. 531. Have you had any other talks with Mr. Bole regarding your testimony given in this interference, excepting the general conversations referred to in your cross-examination at some ball game or other function?

A. I have had a number of talks with Mr. Bole.

Q. 532. In those talks, what did Mr. Bole say to you with regard to any such key device, single-piece key device for the Wilson reamer?

A. He claimed to have been the inventor of it all along, and said that he had plenty of proof that such was the case.

Q. 533. What sort of proof did he tell you about, if any?

A. He has been very careful to keep it to himself.

Q. 534. What did he say to you further about his claim to inventing this key, about any details of such claim?

Mr. LYON.—Objected to as leading, not redirect examination, and not the proper method of proving the conversation and calling for a conclusion of the witness. The witness should be asked to give the words of such conversation and not his conclusions or deductions therefrom.

Mr. BLAKESLEE.—We asked the witness what was said. That, to us, means the words that were



(Deposition of Arthur G. Willard.)

uttered, if they can be remembered.

Mr. LYON.—The objection is repeated.

A. It is impossible to state the exact words.

Q. 535. (By Mr. BLAKESLEE.) Do you remember the general import of such words?

A. His whole talk has been that he is the inventor of it, and he did not seem to feel that he would have very much trouble to prove it and he said all he would expect me to do would be to give him a fair shake in the business, or something like that, and I told him at the time I knew very little about it, it had been a long time ago, I did not take any interest in it, and I only intended to give my testimony from the shop records, and that [349—291] the rest would be hearsay, and I was not going to testify to it.

Q. 536. When, aside from the shop records, and your recollection of some sketch which you have stated accompanied this order of 1908 of the Sunset-Monarch Oil Company, do you remember anything with respect to the dates and occurrences involved, other than as you have testified with respect to any order for an under-reamer or anything accompanying such order, involving Mr. Bole in any manner, prior to 1911?

Mr. LYON.—Objected to as leading.

A. No, sir.

Q. 537. You have testified that you thought possibly the 9 $\frac{5}{8}$  inch reamer for the Snnset-Monarch Oil Company, ordered in 1908, might be returned. Do you know anything as to any such return of that reamer? A. No, sir.

(Deposition of Arthur G. Willard.)

Q. 538. Prior to testifying to the various recapitulation account sheets, two bunches of which are in evidence, and one of which has been marked, "Monthly Report of Bole Pump Company Account for Identification," had you ever in detail examined these bundles of papers prior to giving your testimony about the same to-day?

A. Not these particular bunches, no, sir.

Q. 539. Can you cite any instance of any order for reamers which was received by the Wilson & Willard Manufacturing Company prior to the time Mr. E. C. Wilson came down from Bakersfield to take up active work at the shop of the Wilson & Willard Manufacturing Company, which order was sent out of that shop to Mr. Wilson at Bakersfield or any other place?

A. The shop records will show sales of under-reamers to the Sunset-Monarch Oil Company, Bakersfield Iron Works, Associated Oil Company, Oil Well Supply Company, Jacob & Davies in New York. [350—292]

Q. 540. I think you have misunderstood me. My question was to determine whether you recollect any instance of any order, that is, the requisitions or order, paper or letter, or blank, or other evidence, which had been sent to Mr. Wilson out of the shop, or away from the shop, or mailed from the shop to him prior to the time he finally connected himself with the management of the Wilson & Willard Manufacturing Company business in Los Angeles.

A. No, sir.

(Deposition of Arthur G. Willard.)

Q. 541. Did Mr. Knapp's duties as foreman of the shop of the Wilson & Willard Manufacturing Company have anything to do with the business of the Bole Pump Company in 1911 or 1912?

A. No, sir.

Q. 542. Was there a separate foreman for the Bole Pump Company business? A. Yes, sir.

Q. 543. Was Mr. Knapp responsible at all for any of the shop work of the Bole Pump Company in those years?

Mr. LYON.—Objected to as leading, irrelevant, immaterial, and not redirect examination.

A. No, sir.

Q. 544. Was Mr. Knapp, as far as you know, responsible for any work for Mr. Bole in the shop of the Wilson & Willard Manufacturing Company during those years?

Mr. LYON.—Same objection.

A. No, sir.

Q. 545. (By Mr. BLAKESLEE.) Did Mr. W. W. Wilson make any distinction in performing his services at any time, that is, his services on behalf of the Wilson & Willard Manufacturing Company between the interests of yourself, or any of the same, and the interest of Mr. E. C. Wilson or any of the same?

Mr. LYON.—Same objection as last noted on the record.

A. He was not supposed to. [351—293]

Q. 546. (By Mr. BLAKESLEE.) Do you know of any instance in which he so favored either party

(Deposition of Arthur G. Willard.)

or their interests?

Mr. LYON.—Same objection.

A. No, sir.

Q. 547. (By Mr. BLAKESLEE.) Please describe any changes that were made in the design or form of the single-piece key for Wilson underreamers, or has been made since such single-piece key was first made in the shop of the Wilson & Willard Manufacturing Company.

Mr. LYON.—Objected to as not redirect examination.

A. I don't know of any changes.

Q. 548. (By Mr. BLAKESLEE.) Since arriving at this office to testify this morning, at any time during any recess or otherwise have you had any talk with me, with regard to your testimony given here or to be given in this case?

Mr. LYON.—Objected to as not redirect examination and as an apparent attempt solely to lay the foundation for the impeachment of the witness by the party calling him.

Mr. BLAKESLEE.—We urge the opposite complexion of such question.

A. No, sir.

Q. 549. Have you to-day had any discussion or talk with either Mr. E. C. Wilson, or W. W. Wilson, or Mr. Charles E. Wilcox, or William G. Knapp, testified about by you in this case, with regard to any of the issues of this interference?

Mr. LYON.—Same objection.

A. No, sir.

(Deposition of Arthur G. Willard.)

Q. 550. (By Mr. BLAKESLEE.) Were the two pieces of the two-piece key device of the Wilson under-reamer capable of alone holding themselves in place on the under-reamer?

Mr. LYON.—Objected to as leading and suggestive.

A. No, sir.

Q. 551. (By Mr. BLAKESLEE.) What was necessary to secure that [352—294] firm holding or position of these pieces? A. Screw plug.

Q. 552. When this plug was used, what effect, if any, did the spring have upon holding the pieces of the key and the plug in place?

A. The spring had no effect of holding either the plug or key in place.

Q. 553. Do you remember that settlement of the Bole Pump Company account of February, 1913, do you remember anything being said as between yourself and Mr. E. C. Wilson with respect to his participating in anything that you received from Mr. R. E. Bole on the notes given you by Mr. Bole, to offset the participation of Mr. E. C. Wilson in the loss occasioned by the compromise settlement of the account of the Bole Pump Company?

Mr. LYON.—Objected to as not redirect examination, irrelevant and immaterial to the issues of this interference and as leading.

A. As I remember it, I went up town and got Mr. Bole and brought him down to the shop in my automobile and on the way down I told him that if he would agree to pay the account in full I would go to



(Deposition of Arthur G. Willard.)

work and cancel the outstanding notes. Afterwards I told Mr. Wilson the proposition I had from Mr. Bole and he thought in view of the fact that he had agreed to cancel—agreed to settle this thing, that I should help him bear that loss, and divide the notes with him, and it was discussed along that line, but in our final settlement there was no mention made of the notes, the notes remained my property.

Mr. LYON.—Move to strike the answer from the record and exclude it from consideration on the ground stated in the objection to the question and upon the further ground that it does not appear that any such conversation was had in the presence of the party Bole, and it is therefore incompetent.

Q. 554. (By Mr. BLAKESLEE.) Then, as you remember, nothing more [353—295] was done about that?

Mr. LYON.—Same objection.

A. Nothing more was done about it at all, it was just forgotten.

Q. 555. (By Mr. BLAKESLEE.) I show you what purports to be two opposed pages, and a short inset in what purports to be a two-payment time book for the month of September, 1908, of the Wilson & Willard Manufacturing Company, and call your attention to an entry therein under column 21 opposite the name R. E. Bole, and ask if you know anything about such entry or what it pertains to.

Mr. LYON.—Objected to as not redirect examination, as leading and incompetent and no foundation laid, and the witness is not qualified to answer the

(Deposition of Arthur G. Willard.)

question. The alleged record has not been proven to be a true or correct record, nor is it shown that the witness has any personal knowledge of the keeping of such alleged record.

Mr. BLAKESLEE.—Possibly the answer of the witness may help out in these matters.

A. It shows the number of hours worked on the 21st, 22nd, 23rd, 24th, 25th, 26th, 28th, 29th, and 30th of September, 1908, the total number of hours of work per day and the total amount, and the part paid on the account and the balance due.

Q. 556. Work by whom? A. R. E. Bole.

Q. 557. What R. E. Bole?

A. Of the Bole Pump Company.

Q. 558. A party to this interference?

A. Yes, sir.

Q. 559. Have you ever seen that book before?

A. Yes, sir.

Q. 560. What do you know about the book generally?

A. It is the time book for the Wilson & Willard Manufacturing [354—296] Company, used during October, 1907, to May, 1910.

Q. 561. Did you ever see this book before?

A. Yes, sir.

Q. 562. When, and for the first time, when?

A. During October, 1907.

Q. 563. When after that?

A. The present moment.

Q. 564. Any time between that time?

A. Yes, sir; it is a part of the shop records and I

(Deposition of Arthur G. Willard.)

have seen it a number of times at the office of the Wilson & Willard Manufacturing Company.

Q. 565. What does that item in the column headed "21" mean, opposite to the name R. E. Bole?

Mr. LYON.—All of which is objected to on the ground it is not redirect examination and on the further ground that the record itself is the best evidence and the testimony of this witness is not proper or competent unless the book itself be offered in evidence in connection with the testimony.

Mr. BLAKESLEE.—Again we observe that we do not deem that it is necessary or that the Patent Office will require that we impound in the Patent Office all of the records of the Wilson & Willard Manufacturing Company if the same are properly identified and properly quoted from.

Mr. LYON.—Our objection is repeated and the proceeding of counsel for Wilson is objected to upon the further ground that every possible effort has been and is being used in this interference on behalf of the party Wilson to secrete and keep out of sight all of the records of the Wilson & Willard Manufacturing Company and to deny the party Bole any opportunity of inspecting the same or securing any portions thereof necessary for evidence [355—297] on his behalf and it is for that reason that we are insisting upon the production of the best evidence and if any attempt is made to prove by the records of the Wilson & Willard Manufacturing Company the dates, any of the dates, we insist that the records themselves be offered in evidence, otherwise we object on the ground

(Deposition of Arthur G. Willard.)

that the best evidence has not been produced and the further objection is made in this particular case that there is no proof of this particular record referred to being a true record or that it properly represents what it purports to be or what is set forth therein, or that it has not been changed or altered.

Mr. BLAKESLEE.—We deny that we have obstructed any proper portions of the records of this company and contend that we have gone to supererogation in showing everything which could be properly required to identify the various questions of time and act and the furnishing of circumstances pertinent to the determination of this issue. We are making out Wilson's case and we have no objection to the party Bole fetching in anything with which he wishes to incumber the record when it comes to taking his proof and which he can properly produce.

A. It means the number of hours of work for R. E. Bole on the 28th of September, 1908, for the Wilson & Willard Manufacturing Company.

Q. 566. Do you know whether it was before or after this date, namely, September 21st, 1908, that Mr. Bole turned in the order for the Sunset-Monarch Oil Company covering the  $9\frac{5}{8}$  inch reamer, the 12 Bole pump, the 10-inch cutters, and the Bole casing spear, and I ask you to state if you know this, and if you don't, to make such statement as you may wish to fully cover the matter.

A. I don't know. I believe, however, it was prior to September 21st, 1908.

Q. 567. Have you any reason to remember why

(Deposition of Arthur G. Willard.)

you think it was before? [356—298]

A. Judging from the records of the time book.

Q. 568. What would they show to help you fix that?

A. Mr. Bole—it shows that Mr. Bole had no time in the shop on the 13th, 14th, 15th, 16th, 17th, 18th, 19th, and 20th of September, 1908, and that leads me to believe that during this time he was up in Maricopa.

Q. 569. Even admitting that, how do you arrive at the conclusion or belief that the order was received prior to this September 21st, 1908?

A. The shop order should show the date, the date of the receipt of the order, and I could only tell by referring to the shop order whether or not the order was received.

Q. 570. Are you able to state positively, that Mr. Bole was not at the shop of the Wilson & Willard Manufacturing Company after returning from Maricopa in September, 1908, and prior to going to work in the shop on the 21st of September, 1908?

A. No, sir.

Q. 571. Are you able to state that he was at the shop after such return and prior to such date of return to work, how long he was at the shop or how many days? A. No, sir.

Q. 572. Are you able to state positively that he was not at the shop or in the city of Los Angeles a week prior to going to work on the 21st of September, 1908?

Mr. LYON.—Objected to as leading.



(Deposition of Arthur G. Willard.)

A. No, sir.

Q. 573. If you wish to refresh your memory any further in these matters you may, of course, refer to the shop orders or rather the shop order in question from the Sunset-Monarch Oil Company.

(Witness examines book.) [357—299]

Mr. BLAKESLEE.—The witness has inspected binder folios No. 437 and 438, the same being dated respectively September 18, 1908, and September 19, 1908. "Charge to the Sunset Monarch Oil Company, Hazleton, California, salesman Bole, order received from Heber, Order No. 708, dated September 18th, 1908," referring to one 9<sup>5</sup>/<sub>8</sub> inch reamer and one extra set of cutters. The other is dated, "September 19th, 1908, Order No. 713," referring to one 10-inch Bole spear, the order received from Heber, salesman Bole, being part of the records of the Wilson & Willard Manufacturing Company.

Q. 574. Did you find anything on those shop orders or binder folios which indicates to you how these orders were received?

A. They were received from salesman Bole through the mail.

Q. 575. What indicates they were received through the mail?

A. Because Mr. Bole was in Maricopa at the time the orders were received.

Q. 576. Does anything on the orders or binder folios themselves indicate how they were received?

A. No, sir.

Q. 577. Are you willing to state positively that

(Deposition of Arthur G. Willard.)

Mr. Bole had not returned from Maricopa, September 18th, September 19th, 1908, or before then, in view of the fact that you have testified that he worked in the shop on September 21st, 1908?

Mr. LYON.—Objected to as leading and assuming that the witness has not testified positively, when he has just answered the preceding question to the effect that Mr. Bole was at Maricopa on September 18th, 1908.

Mr. BLAKESLEE.—We refer also to the witness' previous testimony, and ask him to consider all of it.

A. No, sir. [358—300]

Recross-examination.

(By Mr. LYON.)

Q. 578. According to your best recollection when was it that Mr. Bole returned from Maricopa in September, 1908?

A. According to my best recollection, Mr. Bole returned some time after the receipt of the orders.

Q. 579. Do you know in whose handwriting these two orders, No. 708 and 713, are? A. Yes, sir.

Q. 580. Whose? A. W. W. Wilson.

Q. 581. Do you know anything about why or what was the cause for the apparent scratching of the dates on these two binder folios No. 437 and 438 referring to shop orders 708 and 713, respectively, that date of the invoice? A. No, sir.

Mr. BLAKESLEE.—We object to the implication there has been scratching as to these dates; there appear to be abrasions on the sheet, but the final

(Deposition of Arthur G. Willard.)

showing as to dates is clear; it is a rubber stamp in each instance, being September 30th.

A. That has been changed, and that has been changed, and that has been changed.

Mr. LYON.—Witness refers to several of the sheets in this book appearing next after in point of time and number the binder folios Nos. 437 and 438 and points to the date of the invoice as appears thereon.

Q. 582. It is apparent to you, is it, Mr. Willard, that the paper of the binder folios No. 437 and No. 438 having thereon Order Nos. 708 and 713 under the words "Date of invoice" have been scratched with a knife or some sharp instrument?

Mr. BLAKESLEE.—Objected to as calling for a conclusion of the witness. [359—301]

Q. 583. (By Mr. LYON.) Please examine it carefully.

Mr. BLAKESLEE.—Let the witness state anything that he knows, if he knows, as to those matters.

A. Yes, sir.

Q. 584. (By Mr. LYON.) Do you know by whom this was done? A. No, sir.

Q. 585. Nor when it was done? A. No, sir.

Mr. BLAKESLEE.—Let the record show that counsel for Bole is generally exploring the two-payment time book discussed by the witness, which book has not been offered completely in evidence. We, however, have no objection to his inspection of any entry in this book as it concerns merely the employees of the concern and the time they worked and

(Deposition of Arthur G. Willard.)

the amount paid them.

Q. 586. (By Mr. Lyon.) During September, 1908, the afternoon time of the workmen in the shop of the Wilson & Willard Manufacturing Company was from 12:30 to 4:30? A. Yes, sir.

Q. 587. That would be four hours' time?

A. Yes, sir.

Q. 588. I notice that this time book to which you have referred shows that Mr. Bole worked four hours only on September 21st, 1908. Is that a circumstance which would enable you in any manner to fix the time of his return from his Maricopa trip and going to work again for the Wilson & Willard Manufacturing Company?

A. Not positively, no, sir.

Q. 589. What does it signify to you?

A. It signifies to me that R. E. Bole went to work at 12:30 and worked until 4:30 on September 21st.

Q. 590. That was his first work he did at the shop after leaving for Maricopa, California? [360—302]

A. Yes, sir.

Q. 591. Are you very positive, Mr. Willard, that Mr. W. W. Wilson was present in the shop of the Wilson & Willard Manufacturing Company and employed there at any time during September, 1908, or was it a fact that the work was getting heavy, and you were getting behind in your bookkeeping, and he came into the employ of the Wilson & Willard Manufacturing Company on or a little after October 1st, 1908? A. No, sir, I am not positive.

(Deposition of Arthur G. Willard.)

Q. 592. Is there any record of the Wilson & Willard Manufacturing Company that you know of which would positively fix this fact?

A. Not unless it would be some record in the old ledger regarding Mr. Wilson's time and salary and services on certain dates.

Mr. BLAKESLEE.—The witness may take the ledger but we refuse *to counsel* or anybody else an inspection of this ledger.

Q. 593. (By Mr. LYON.) Please examine this ledger and see if you can find anything in it, Mr. Willard, which will fix the date upon which Mr. W. W. Wilson entered the employ of the Wilson & Willard Manufacturing Company in 1908. If so, state what it is and read such entry in the record.

A. I am not able to determine from the ledger just what time Mr. Wilson entered upon his duties. His first salary was paid to him, however, on October 16th, 1908.

Q. 594. What was the amount of such payment?

A. \$37.50.

Q. 595. How much was he getting monthly when he first went to work? A. \$75 per month.

Q. 596. When you sold your interest in the Bole Pump Company to R. E. Bole it was understood that the business should be carried on by the Wilson & Willard Manufacturing Company in the [361—303] manner it had been theretofore?

A. Yes, sir, excepting that I no longer guaranteed the account. Mr. Wilson understood that.

Q. 597. The guarantee of this Bole account by



(Deposition of Arthur G. Willard.)

you was simply a personal verbal one to Mr. E. C. Wilson, was it?

A. Partly. For a long time the Bole pump was charged to A. G. Willard personally, and during that time there was other matters charged to us, such as the Willard circulating head and other things, so Mr. Wilson elected to change the account and make it Willard's personal account and the Bole Pump account and it was understood that I guaranteed the account.

Redirect Examination.

(By Mr. BLAKESLEE.)

Q. 598. Do you know whether or not Mr. W. W. Wilson performed work or services at the shop or office of the Wilson & Willard Manufacturing Company prior to the period in 1908 which his actual pay covered?

Mr. LYON.—Objected to as leading and suggestive.

A. No, not positively; no, sir.

Q. 599. (By Mr. BLAKESLEE.) What is your recollection as to that?

A. I have none excepting the shop records.

Q. 600. You are sure, are you, that these orders of September 18th and 19th of the Sunset-Monarch Oil Company are in W. W. Wilson's handwriting?

A. Yes, sir.

Q. 601. You are not prepared to state positively that Mr. W. W. Wilson was not rendering services for the Wilson & Willard Manufacturing Company

(Deposition of Arthur G. Willard.)

on September 18th or 19th, 1908, or even prior thereto?

Mr. LYON.—Objected to as leading.

A. No, sir. [362—304]

A. G. WILLARD, recalled for further direct examination, testified as follows:

Direct Examination.

(By Mr. BLAKESLEE.)

Q. 602. With relation to the time when Mr. Wilson filed his application for patent involved in this interference, how do you fix the time you told Mr. E. C. Wilson that Mr. R. E. Bole had applied or intended to apply for an application for the patent involved in this interference?

A. I have no way of fixing the exact date.

Q. 603. Have you any definite recollection as to whether you told Mr. Wilson this before Mr. Bole applied or after Mr. Bole applied? A. After.

Q. 604. How do you fix such information to Mr. Wilson as being after the time Mr. Bole applied?

A. I remember distinctly that Mr. Bole told me that he had applied for the patent and I also remember that it was after this time that I informed Mr. Wilson that Mr. Bole had applied for a patent.

Q. 605. How soon after would you fix that time?

A. From thirty to ninety days.

Q. 606. I call your attention to the fact that the application of Mr. Wilson involved in this interference was filed twenty-seven days after Mr. Bole filed his application for the patent in suit, that is, filed it in Washington, D. C. Are you able to state it was

(Deposition of Arthur G. Willard.)

during these twenty-seven days that you told Mr. Wilson Mr. Bole had filed an application?

Mr. LYON.—Objected to as leading.

A. It was after that date, after the date of Mr. Wilson's application.

(Signed.) ARTHUR G. WILLARD. [363—305]

[Testimony of A. G. Willard, for Defendants (in Rebuttal).]

A. G. WILLARD, recalled on behalf of Wilson, testified in rebuttal as follows:

Direct Examination.

(By Mr. BLAKESLEE.)

Q. 1. Mr. Willard, have you read the testimony of Robert E. Bole, taken on his own behalf in this interference? A. Yes, sir.

Q. 2. Referring to binder folio 437 relating to the order of the Sunset-Monarch Oil Company, dated September 18, 1908, and which has a notation "Salesman Bole," can you state who was in charge of the shop of the Wilson & Willard Manufacturing Company and the premises at the time that order was received?

Mr. LYON.—Objected to as not rebuttal and having been fully gone over in the testimony of this witness and other witnesses on behalf of the party Wilson in his *prima facie* proofs.

A. Do you want a list of all the men working at that time?

Q. 3. (By Mr. BLAKESLEE.) No; just the party who was in charge of the shop.

(Testimony of A. G. Willard.)

Mr. LYON.—The same objection.

A. I was in charge.

Q. 4. (By Mr. BLAKESLEE.) I now show you the time slips of order No. 709 and ask you if you know anything about it. Let it be shown that the witness is shown Bole's Exhibit Wilson Cross-examination Exhibit 1. [364—306]

Mr. LYON.—Objected to as not rebuttal, and on each of the grounds stated in the objection made heretofore.

A. It is the time cards of the men who worked on reamer 173, part of them, at least.

Q. 5. (By Mr. BLAKESLEE.) Do you know what was done with that reamer?

Mr. LYON.—The same objection.

A. No, sir.

Q. 6. (By Mr. BLAKESLEE.) Do you know who ordered that reamer?

Mr. LYON.—The same objection.

A. No, sir.

Q. 7. (By Mr. BLAKESLEE.) I will call your attention to the fact that several of these slips bear the name "Bole." Do you know in whose handwriting that name appears?

Mr. LYON.—The same objection.

A. Mr. Bole's handwriting.

Q. 8. (By Mr. BLAKESLEE.) You mean Robert E. Bole, party to this interference?

Mr. LYON.—The same objection.

A. Yes, sir.

Q. 9. (By Mr. BLAKESLEE.) I call your at-

(Testimony of A. G. Willard.)

tention particularly to the answers and questions numbered from 63 to 71 inclusive on pages 56 and 57 of the record of Bole, in which Mr. Bole has testified a certain conversation took place between himself and yourself after he got back to the shops of the Wilson & Willard Manufacturing Company in September, 1908, and I will ask you to state whether you recollect any such conversation, and what you recollect in that respect.

Mr. LYON.—Objected to as leading and having been fully gone over in the previous deposition of this witness in the *prima facie* proofs of the party Wilson, and not rebuttal; and as not the proper method of proof. [365—307]

Mr. BLAKESLEE.—We insist upon our right to traverse any statements or testimony on behalf of the party Bole, that such statements were made irrespective of what our prior proofs may have been.

A. I don't remember of any such conversation.

Q. 10. (By Mr. BLAKESLEE.) Do you know whether the order of the Sunset-Monarch Oil Company, referred to in that testimony, was filled? That is, whether a reamer was shipped to the Sunset-Monach Oil Company?

Mr. LYON.—Objected to as not rebuttal and as leading.

A. The reamer was shipped; yes, sir.

Q. 11. (By Mr. BLAKESLEE.) Are you able to state at this time what kind of a reamer was so shipped?

Mr. LYON.—Objected to as not rebuttal.



(Testimony of A. G. Willard.)

A. Not positively, no.

Q. 12. (By Mr. BLAKESLEE.) Prior to the shipment of the reamer on that order, did you take up the matter of that order in any respect with Mr. E. C. Wilson?

Mr. LYON.—Objected to as not rebuttal and as leading.

A. No, sir.

Q. 13. (By Mr. BLAKESLEE.) Did you state to Mr. Bole at such time, namely, the time mentioned in the testimony referred to, that Mr. Wilson would stand for no change in the reamer whatsoever?

Mr. LYON.—Objected to as not rebuttal.

A. I don't think I ever made any such statement, because I had no way of knowing what Mr. Wilson would stand for.

Q. 14. (By Mr. BLAKESLEE.) At the time of that purported conversation, was anything said between Mr. Bole and yourself with reference to the making of a heavier tee bar for Wilson reamers?

Mr. LYON.—Objected to as not rebuttal, and calling for a conclusion of the witness. If the witness had a conversation, he [366—308] should be asked to give the conversation in full before being so interrogated.

A. No, sir; certainly not.

Q. 15. (By Mr. BLAKESLEE.) Did Mr. Bole at that time, namely, the time of such purported conversation with you, tell you that he could or you could overcome that difficulty of the tee bar breaking, or any such difficulty, and could bore out the

(Testimony of A. G. Willard.)

reamer body and flatten out the spring, and put in a flat spring in place of a round spring, and get the same strength of spring and make a heavier tee bar, and, if necessary, make a key very thin and deep, and that would add strength to the tee bar?

Mr. LYON.—Objected to as leading and not rebuttal, and not the proper method of proof.

A. No, sir.

Q. 16. (By Mr. BLAKESLEE.) Have you read the testimony of August F. Adams, called as a witness on behalf of the party Bole in this interference?

A. Yes, sir.

Q. 17. I call your attention particularly to that portion of Adams's testimony being cross-questions and the answers thereto, numbers 61 to 66, inclusive, and ask you what you have to say as to such testimony.

A. I do not remember being present at any such conference, and I am quite positive that I have never driven a single-piece key into a Wilson under-reamer, nor have I driven one out of a Wilson under-reamer, at that time, or before, or since.

Q. 18. Were you at any time ever present in the shop of the Wilson & Willard Manufacturing Company when the said Adams and Robert E. Bole were also present, and when Mr. Bole referred to any drawing in speaking to Mr. Adams?

Mr. LYON.—Objected to as leading.

A. No, sir. [367—309]

Q. 19. (By Mr. BLAKESLEE.) Were you ever present under similar circumstances at any time

(Testimony of A. G. Willard.)

when Mr. Bole referred to any sketch and the way it purported to have worked?

Mr. LYON.—Objected to as leading.

A. No, sir.

Q. 20. (By Mr. BLAKESLEE.) Did you at any time ever drive a key into a Wilson reamer in the presence of Mr. Adams, the witness referred to?

Mr. LYON.—Objected to as leading.

A. Not a single-piece key.

Q. 21. (By Mr. BLAKESLEE.) Do you recollect having ever driven any kind of a key into the Wilson reamer when the said Adams was present?

Mr. LYON.—Objected to as leading.

A. No, sir.

Q. 22. (By Mr. BLAKESLEE.) During the making up of the reamer which was shipped to the Sunset-Monarch Oil Company on their order of September, 1908, which Mr. Bole has testified he took, did you communicate with relation to that reamer in any respect with Mr. E. C. Wilson, party to this interference?

Mr. LYON.—Objected to as not rebuttal, having been fully gone over in the testimony of the witness in his deposition in the *prima facie* proofs of this party.

A. No, sir.

Q. 23. (By Mr. BLAKESLEE.) I show you what purports to be a sketch, together with certain names and other writings, attached to a white sheet of paper, concealing the identification thereof, and ask you if you have ever seen the same before.

(Testimony of A. G. Willard.)

A. Yes, sir; I have.

Q. 24. When? A. In this office.

Q. 25. And when? [368—310]

A. I think it was last Thursday.

Q. 26. Thursday of last week?

A. I think that was the date.

Q. 27. Did you ever see it before that time?

A. No, sir.

Mr. BLAKESLEE.—Let it be shown that the witness has last testified with respect to Bole's Exhibit January 27, 1911, Sketch.

Q. 28. In making under-reamers in the shop of the Wilson & Willard Manufacturing Company, and I mean Wilson reamers as you have testified to them, what was the first step taken in working up the under-reamer at the time or about the time or including the time that the order of September, 1908, was filled and shipped to the Sunset-Monarch Oil Company?

Mr. LYON.—Objected to as not rebuttal and as leading and assuming that there was a regular custom, and as irrelevant and immaterial.

A. Machining the body was usually the first operation.

Q. 29. (By Mr. BLAKESLEE.) What was this machining done on?

Mr. LYON.—The same objection.

A. On the lathe.

Q. 30. (By Mr. BLAKESLEE.) And what was the work as taken up by the lathe machinist when the job came to him?

(Testimony of A. G. Willard.)

Mr. LYON.—The same objection.

A. I don't understand that.

Q. 31. (By Mr. BLAKESLEE.) Question withdrawn. What was the condition of the work when it came to the lathe operator?

A. It was in the rough.

Q. 32. What was it called, in the rough?

A. A forging.

Q. 33. A forging of what?

A. Under-reamer body. [369—311]

Q. 34. What was the general shape or nature of this forging?

A. It was forged round and cut off to the length of the reamer, and a collar turned down for the pin.

Q. 35. A piece of round forge stock, was it, in the beginning? A. Yes, sir.

Q. 36. What was the first lathe operation?

A. Centering it up and turning the outside.

Q. 37. And what was next done when it was turned down externally of the right size?

Mr. LYON.—This line of examination is objected to, and each question and answer is objected to, on the ground that it is not rebuttal testimony and immaterial.

A. Bored out.

Q. 38. (By Mr. BLAKESLEE.) And what was it bored out of?

Mr. LYON.—The same objection.

A. To receive a spring.

Q. 39. (By Mr. BLAKESLEE.) How was the diameter of the bore established?



(Testimony of A. G. Willard.)

A. Taken from the blue-print.

Q. 40. And what was it bored to fit, or what was to fit in the bore? A. The spring.

Q. 41. And what was the spring mounted on?

A. The tee bar.

Q. 42. What was the nature of the fit of the tee bar and spring in the bore?

A. It fitted within a quarter of an inch.

Q. 43. What you might call a free-working fit?

A. Yes, sir.

Q. 44. If a meterial change or increase was made in the size of the coil of spring or of the body of the tee bar, would any [370—312] difference be made in the diameter of the bore in the body?

Mr. LYON.—Objected to as leading.

A. The bore would be made larger.

Q. 45. (By Mr. BLAKESLEE.) Now, as to the manufacture of the reamer shipped to the Sunset-Monarch Oil Company on the order of September, 1908, which we have discussed, do you remember anything with respect to the boring of the body of that reamer?

Mr. LYON.—Objected to as not rebuttal.

A. It was made the same as all reamers of that size.

Q. 46. (By Mr. BLAKESLEE.) Was there any difference made in the size of the internal diameter of that body?

Mr. LYON.—The same objection and as leading.

A. No, sir.

Q. 47. (By Mr. BLAKESLEE.) How soon

(Testimony of A. G. Willard.)

after that order was received, to the best of your recollection, was such body boring operation commenced on that reamer?

A. Inside of two days, I would say.

Q. 48. Where was this boring operation performed of reamer bodies at that time?

A. On a Bridgford lathe.

Q. 49. What lathe was the turning of the body done on?

Mr. LYON.—The same objection.

A. The same lathe.

Q. 50. (By Mr. BLAKESLEE.) How did these operations occur as to time?

Mr. LYON.—The same objection, and not rebuttal.

A. The body was first turned, and it was immediately bored before it left the lathe. One operation following the other.

Q. 51. (By Mr. BLAKESLEE.) How many machinists were employed on these two pieces of work on the same lathe?

Mr. LYON.—Objected to as not in rebuttal. [371—313] A. One.

Q. 52. (By Mr. BLAKESLEE.) The same workman for both operations?

A. Yes, sir; unless we are running a night shift, and then there would be two workmen on the same lathe.

Q. 53. Were you running a night shift in September, 1908? A. I can't state.

Q. 54. Do you recollect that you were?

Mr. LYON.—Objected to as leading and incom-

(Testimony of A. G. Willard.)

petent, the witness having already said that he has no recollection.

A. No, I do not.

Q. 55. (By Mr. BLAKESLEE.) Are you able to give any recollection at this time as to the means which were installed in the reamer shipped to the Sunset-Monarch Oil Company on the order of September, 1908, which means were employed to hold the lower end of the spring?

Mr. LYON.—Objected to as not rebuttal, having been thoroughly gone over in the previous deposition of this witness, and when called as a witness in the *prima facie* proofs by the party Wilson, and as already answered by this witness. He said he didn't remember.

A. I can't say positively, no.

Q. 56. (By Mr. BLAKESLEE.) Have you any recollection as to that? A. No, sir.

Q. 57. Do you recollect whether any departure was made in the production of this reamer from the general practice or general run of reamers put through the shop at that time?

Mr. LYON.—Objected to as leading and as incompetent, calling for a mere conclusion or guess of the witness, the witness having already testified that he has no knowledge in regard thereto; and on the further ground that it is not rebuttal, the same subject [372—314] matter having been fully gone over on the testimony of this witness when called as a witness on behalf of the party Wilson during Wilson's *prima facie* proofs.

(Testimony of A. G. Willard.)

A. The reamer was a stock or standard reamer, in every particular.

Mr. LYON.—We move to strike the answer from the record and exclude it from consideration on the grounds stated in the objection.

Q. 58. (By Mr. BLAKESLEE.) Prior to September, 1908, had Robert E. Bole ever disclosed to you by word of mouth, or sketch, or in any manner, improvements in other devices or inventions in other devices which he was considering or had under way? And I am asking you now to tell me if that was the case, and what these things were. Merely if he had done so.

Mr. LYON.—Objected to as leading and as immaterial

A. Yes, sir.

Q. 59. (By Mr. BLAKESLEE.) And has the same been true at times subsequent to that month of that year?

Mr. LYON.—The same objection, calling for a conclusion of the witness and not rebuttal.

A. Yes, sir.

Q. 60. (By Mr. BLAKESLEE.) Can it be truthfully said as to the relations between yourself and Mr. Bole during the year 1908, that they were confidential and close?

Mr. LYON.—Objected to as calling for a conclusion of the witness and not rebuttal.

A. We were on the best of terms.

Q. 61. (By Mr. BLAKESLEE.) How fre-

(Testimony of A. G. Willard.)

quently did you have general talks with Mr. Bole that year?

Mr. LYON.—The same objection.

A. I saw Mr. Bole every day when he was in the city. [373—315]

Q. 62. (By Mr. BLAKESLEE.) And out of the shop at times, as well?

A. No; I can't say that I saw him out of the shop so much.

Q. 63. How was it during the years 1909 and 1910? Did you meet Mr. Bole socially out of the shop during those years?

Mr. LYON.—Objected to as not rebuttal, having been fully gone over in the previous deposition of this witness, and as leading.

A. I can't state positively. Mr. Bole had been a welcome visitor at our house for a number of years, and spent frequent evenings out there.

Q. 64. (By Mr. BLAKESLEE.) And how many times were you at ball games?

Mr. LYON.—The same objection.

A. We were out on trips and at ball games.

Q. 65. (By Mr. BLAKESLEE.) And during these trips and these occasions, did or did not Mr. Bole discuss with you contemplated business plans or changes in devices he had under way?

Mr. LYON.—Objected to as not rebuttal, as leading and incompetent, calling for a conclusion of the witness, not the best evidence and not the proper method of proof. And if it is desired to prove conversations, the conversations should be proven by the



(Testimony of A. G. Willard.)

words thereof as far as the witness can remember them, and not by his deductions or conclusions therefrom.

A. He did to a certain extent.

Mr. BLAKESLEE.—That is all.

Mr. LYON.—Without waiving any of the objections to questions and answers, and subject to a motion now made to strike from the record and exclude from consideration each of the questions asked and answers given, on the ground that the same are not rebuttal, and on each of the other grounds stated in the objections to the questions, and to abide a ruling upon such motions and to follow [374—316] the same, I cross-examine the witness.

Cross-examination.

(By Mr. LYON.)

XQ. 66. I believe you stated, Mr. Willard, that you were at this office, to wit, Mr. Blakeslee's office, on Thursday, September 25, 1914. At what time did you call at this office, and how did you come to call there?

Mr. BLAKESLEE.—Objected to as not in accordance with the testimony of the witness. September 25 would hardly be last Thursday.

A. I didn't get in here. I was not here at that time.

XQ. 67. (By Mr. LYON.) Should it be October 2?

Mr. BLAKESLEE.—October 1 would be Thursday.

(Testimony of A. G. Willard.)

Mr. LYON.—I object to counsel for Wilson coaching the witness.

Mr. BLAKESLEE.—I am simply calling counsel's attention to the previous testimony and the fact that he is apparently attempting to mislead the witness by an improper reference to his testimony.

A. Thursday, October 1.

XQ. 68. (By Mr. LYON.) How did you come to visit Mr. Blakeslee's office that day?

A. By request.

XQ. 69. Of whom?

A. W. W. Wilson, I believe.

XQ. 70. At what time did you come to this office on said day? A. Between 1 and 2 o'clock.

XQ. 71. And how long did you remain?

A. Till 3 o'clock.

XQ. 72. During that time you were discussing the testimony that had been given and the testimony that you were to give in this case, were you?

A. No, sir. [375—317]

XQ. 73. You had no discussion whatever of it?

A. We had no discussion pertaining to the testimony that I was to give.

XQ. 74. What was that discussion about?

A. Regarding this here drawing that has been placed in evidence, principally; and talking about the trip, and I was asked by Mr. Blakeslee if I would care to read over the testimony of Mr. Bole, Adams and Heber, and I took the testimony home with me and read it at home.

XQ. 75. Are we to understand that you have a

(Testimony of A. G. Willard.)

distinct recollection of the manufacture of this under-reamer for the Sunset-Monarch Oil Company in September, 1908?

A. I have a distinct recollection that it was made standard and that no changes were made.

XQ. 76. Now, please answer the question.  
(Question is read.) A. No, sir.

XQ. 77. Where was the order for such under-reamer received?

A. The shop of the Wilson & Willard Manufacturing Company, 1520 Santa Fe Avenue.

XQ. 78. In what manner was such order received? A. It came through the mail.

XQ. 79. From whom?

A. Mr. Robert E. Bole.

XQ. 80. What has become of that order?

A. Do you refer to the original order or letter?

XQ. 81. The original order or letter.

A. I can't answer the question.

XQ. 82. Will you swear positively that you did not send that original order or letter of Robert E. Bole, to whom we have referred, to Mr. E. C. Wilson at Bakersfield, California?

A. Yes, sir. [376—318]

XQ. 83. Your recollection to-day is very different from when you were on the stand before, is it?

A. Somewhat.

XQ. 84. Please tell us why.

Mr. BLAKESLEE.—Objected to as not cross-examination, not the proper method of proof and not calling for a statement of facts, but calling for a

(Testimony of A. G. Willard.)

psychological conclusion, and no foundation laid.

A. I have had two months to think this thing over.

XQ. 85. (By Mr. LYON.) Are you prepared to state that work upon the reamer which was shipped to the Sunset-Monarch Oil Company in September, 1908, and I mean upon the particular reamer that was subsequently shipped to that company, was commenced prior to receiving the order from Mr. Bole? A. No, sir.

XQ. 86. After still thinking the matter over for two months, are you still of the opinion that you do not remember what sketch or sketches the order sent in by Mr. Robert E. Bole in September, 1908, for this Sunset-Monarch reamer were?

Mr. BLAKESLEE.—Objected to as calling merely for an expression or opinion and not for a statement of fact and not for the proper method of proof.

A. I don't remember that there was a sketch accompanied the order.

XQ. 87. (By Mr. LYON.) What kind of reamers were you manufacturing at the Wilson & Willard shop in the latter part of September, 1908? And I refer particularly to the devices for holding the tee bar in place and the tee bar.

A. Wilson under-reamer.

XQ. 88. That is not an answer to the question, as you know. Please read the question again and let him answer.

Mr. BLAKESLEE.—We object to the witness being criticised. [377—319]

(Testimony of A. G. Willard.)

A. We were manufacturing the Wilson under-reamer in 1908.

XQ. 89. (By Mr. LYON.) With what kind of a tee bar at that time?

A. To the best of my recollection the slotted tee bar and 2-piece key.

XQ. 90. Were you manufacturing in the month of September, 1908, at the Wilson & Willard Manufacturing Company's shop in Los Angeles, any of the Wilson under-reamers of the block and screw type?

A. Not to the best of my recollection.

XQ. 91. Will you swear positively that you were not? A. No.

XQ. 92. Will you state positively that you did not tell Mr. Robert E. Bole that you had sent this original order containing this sketch of the 1-piece key, or the key device which Bole sent in as a part of this Sunset-Monarch Oil Company order of 1908, to Elihu C. Wilson at Bakersfield, California?

A. I am positive that I never told Mr. Bole that I sent his letter to Mr. E. C. Wilson at Bakersfield.

XQ. 93. You never had any conversation at all with Mr. Bole in regard to that Sunset-Monarch order or that key device or the contemplated change in the Wilson reamer to fill such Sunset-Monarch Oil Company order, did you?

A. I had some conversation with Mr. Bole regarding the shipment of the reamer; yes, sir.

XQ. 94. When did you have that conversation?

A. When Mr. Bole returned from Coalinga.



(Testimony of A. G. Willard.)

XQ. 95. What was that conversation? Please state it in full.

A. That there would be no change in the reamer; that it would be shipped the same as the other reamers that we were making.

XQ. 96. Is that all the conversation?

A. That is the substance of it.

XQ. 97. Give us the rest of it. [378—320]

A. That is all I can give you.

XQ. 98. Did you give Mr. Bole at that time any reason why the changes would not be made?

A. I told Mr. Bole that I had no authority to make the changes in the reamer.

XQ. 99. Did you explain to him why you had no authority to make changes in the reamer?

A. I don't know as it was necessary.

XQ. 100. Answer the question. A. No, sir.

XQ. 101. You have been shown Bole's Exhibit January 27, 1911, Sketch. I will ask you to examine the same and state if you are familiar with the signatures there.

A. Yes, sir; I am familiar with the three signatures—

Mr. BLAKESLEE.—Objected to as indefinite and as assuming that anything appearing on such sketch is a signature, original, reproduction, or otherwise.

XQ. 102. (By Mr. LYON.) What three signatures?

A. The signature of Mr. W. H. Fahnestock, E. F. Grigsby and Robert E. Bole.

XQ. 103. You have seen the signatures of these

(Testimony of A. G. Willard.)

three men a great many times, have you?

A. Yes, sir.

XQ. 104. Are you able to state that these are the signatures of those three men?

A. To the best of my belief they are the signatures of the three men.

XQ. 105. I believe you stated that Mr. Bole never showed you this particular sketch. Is that correct?

A. He never showed me the sketch. He may have showed me the signatures.

XQ. 106. When? [379—321]

A. At one time at a ball game he showed me a signature, and the rest of it hid. I don't know whether it was the same one or not. He showed me the signature of W. H. Fahnestock and the rest of it hid.

XQ. 107. And you had some conversation with him in regard to it at that time?

A. He asked me if I recognized it, or something to that effect.

XQ. 108. He didn't show you the sketch at the time, did he? A. No, sir.

XQ. 109. What conversation did you have with Mr. Bole at that time regarding such signature? Please state it in full.

A. If I remember, he told me he showed the signature to W. H. Fahnestock and asked him if he recognized it, or words to that effect, and I believe he said Mr. Fahnestock admitted that it was his signature.

Mr. BLAKESLEE.—We ask that the answer be stricken out as merely hearsay with respect to any-

(Testimony of A. G. Willard.)

thing that the party Fahnestock referred to may have said, or may have been purported to have said.

XQ. 110. (By Mr. LYON.) You have given your best recollection of this conversation at the ball game that you refer to? A. Yes, sir.

XQ. 111. Isn't it a fact that Mr. Bole told you that Mr. W. H. Fahnestock asked him if he had any sketch or sketches with his signature thereon, and that Bole had told you he then showed him this signature on this sketch, and that Bole then told you that Fahnestock said, "That is my signature, all right. I would like to know the date of the sketch"?

Mr. BLAKESLEE.—Objected to as not the proper method of proof, calling for testimony which can be nothing more than hearsay as to what the party Fahnestock is supposed to have said. [380—322]

A. I believe that is straight, all right. I think some such conversation took place.

Mr. LYON.—That is all.

Redirect Examination.

(By Mr. BLAKESLEE.)

RDQ. 112. The party Bole has testified in answer to question 40, page 52: "As I went along in the letter I described the new style reamer and with each description I drew a sketch. I drew a sketch of this key and I drew a sketch of the tee bar and showed him how he could make it heavier than the old style, or the one that had broken all the time and given them all the trouble."

What have you to say as to any such sketches distributed throughout any such letter sent in by Mr.

(Testimony of A. G. Willard.)

Bole in connection with this order from the Sunset-Monarch Oil Company of September, 1908?

Mr. LYON.—Objected to as leading and suggestive, and as calling for a conclusion of the witness and not for a statement of facts, and not for the best evidence.

A. I never saw the sketches.

RDQ. 113. (By Mr. BLAKESLEE.) Do you remember to whom this letter ordering this reamer for the Sunset-Monarch Oil Company was addressed?

A. No, sir.

RDQ. 114. And you saw the letter, did you?

A. Yes, sir.

RDQ. 115. I call your attention again to binder folios 437 and 438 of the records of the Wilson & Willard Manufacturing Company, which pertain to those two orders of the Sunset-Monarch Oil Company, one for a reamer and the other for a Bole spear, and to the red line indorsements at the bottom of the respective binder folios, namely, "Cr. E. C. W." and "Cr. R. E. Bole," and I will ask you to state what you know as to such indorsements or notations. [381—323]

Mr. LYON.—Objected to as not redirect examination and not rebuttal.

A. The letters "Cr" and "E. C. W." refer to the account of Mr. E. C. Wilson. In other words, it means to credit Mr. E. C. Wilson's account.

RDQ. 116. (By Mr. BLAKESLEE.) Now, on page 285.

A. On page 285 the letters "Cr. R. E. Bole" is to

(Testimony of A. G. Willard.)

credit the account of R. E. Bole.

RDQ. 117. Do you know why these different notations were made on these two binder folios?

Mr. LYON.—The same objection.

A. Yes, sir.

RDQ. 118. (By Mr. BLAKESLEE.) Please state.

A. It is the custom down at the shop there in entering the shop order to charge the account for the cost of manufacture, and credit the account with the sale.

RDQ. 119. And do the notations "Salesman Bole" on both of these binder folios relate to the same Mr. Bole?

Mr. LYON.—The same objection, and as leading.

A. Yes, sir.

RDQ. 120. (By Mr. BLAKESLEE.) And in that case why were the different notations made as to credits upon these binder folios?

Mr. LYON.—The same objection.

A. The spear was made and charged to R. E. Bole, and the reamer was made and charged to E. C. Wilson.

RDQ. 121. (By Mr. BLAKESLEE.) Why was the spear charged to Mr. R. E. Bole?

Mr. LYON.—The same objection.

A. It was a Bole spear, made under Mr. Bole's direction.

RDQ. 122. (By Mr. BLAKESLEE.) Was there something special on this Bole spear order?



(Testimony of A. G. Willard.)

Mr. LYON.—The same objection, and calling for a conclusion of the witness.

A. Yes, sir.

RDQ. 123. (By Mr. BLAKESLEE.) What was there special about it?

Mr. LYON.—The same objection.

A. Nothing special, only in the construction; that is all.

RDQ. 124. (By Mr. BLAKESLEE.) Was there anything special about the order for the underreamer?

Mr. LYON.—Objected to as leading.

A. No, sir.

RDQ. 125. (By Mr. BLAKESLEE.) Then why was the order credited to E. C. Wilson? That is, the order for the reamer.

A. Because he had been charged with the manufacture of the reamer, and it was our custom to give the account credit.

RDQ. 126. When was such credit given?

A. Once a month.

RDQ. 127. Now, have you any recollection of anything which distinguished this order of the Sunset-Monarch Oil Company of September, 1908, for a reamer from the reamers as they were being turned out in the shop of the Wilson & Willard Manufacturing Company, bearing in mind that you have stated that you told Bole there would be no changes in filling such order?

Mr. LYON.—Objected to as leading and as not rebuttal, having been fully gone over in the deposi-

(Testimony of A. G. Willard.)

tion of this witness when called as a witness on behalf of Wilson during the time of his *prima facie* case.

A. No, sir.

RDQ. 128. (By Mr. BLAKESLEE.) If the filling of this order for a reamer for the Sunset-Monarch Oil Company on the order of September, 1908, had in fact involved any special features of construction traceable to Mr. Bole, what would have been the [383—325] indorsement in the binder folio of such order, in accordance with the custom in the shop at that time?

Mr. LYON.—Objected to as not rebuttal and as argumentative, and as leading and assuming that there was a custom, and as incompetent and calling for a conclusion of the witness, no foundation laid, not the best evidence.

Mr. BLAKESLEE.—The witness has testified in foundation for such question as to the custom in indorsing binder folios.

A. There would have been a record made on the sheet of the binder folio stating just what the alterations or changes were that were made.

RDQ. 129. What sort of a looking thing was it that was shown to you at the ball game some time ago, with what purported to be a Fahnestock signature on it?

A. It appeared to me to be a card about the same size as in evidence here with a card above and below the signature.

RDQ. 130. What kind of a card or what colored card? A. White, I would say.

(Testimony of A. G. Willard.)

RDQ. 131. What sort of material was the signature on?

A. I don't know. I can't say positively.

RDQ. 132. Was it on the kind of material that I show you in connection with Bole's Exhibit January 27, 1911, Sketch?

Mr. LYON.—Objected to as leading.

A. Have you got a couple of cards? (Takes two cards and conceals the upper and lower part of the exhibit referred to.) That is all I saw. I don't know.

Mr. BLAKESLEE.—The witness illustrates on the sketch by covering the face of the sketch so as to obscure everything but the purported signature of W. H. Fahnestock.

RDQ. 133. Do you remember anything as to the nature of material that the signature appeared to be on?

A. A light background; that is all I remember.  
[384—326]

RDQ. 134. Was it the same color as this sketch or tracing?

Mr. LYON.—Objected to as leading.

A. It appeared to be the same.

RDQ. 135. (By Mr. BLAKESLEE.) Why did Mr. Bole cover up everything but the signature?

A. He didn't state his reasons, and I didn't ask them.

RDQ. 136. Did he show you anything else at that time in connection with this obscured or partially obscured surface? A. I think not.

(Testimony of A. G. Willard.)

RDQ. 137. When was this occurrence?

A. Back there in June or July, when we were at the ball game.

RDQ. 138. What year? A. 1914.

RDQ. 139. Do you remember when it was with relation to the time that Mr. Wilson gave his testimony in the opening case in this interference?

A. No, sir.

RDQ. 140. When was it with respect to the time you were interrogated about when you were at the ball game and Mr. Lyon asked you if Bole didn't ask you if deep down in your heart you didn't believe that he, Bole, was the inventor of this key in controversy? When was it with relation to the time when you attended that ball game?

A. That was the time when he disclosed the signature. I don't remember what hour it was. It was some time between half-past two and five o'clock.

RDQ. 141. And do you remember what time it was with relation to the time that Mr. Wilson was giving his first testimony in this case?

A. No, sir. I don't know when the case was started or when Mr. Wilson gave his testimony.

RDQ. 142. What did Mr. Bole say he was going to do with that purported signature? [385—327]

Mr. LYON.—Objected to as leading and as assuming facts not testified to by the witness and not the proper method of proof.

A. As I remember, Mr. Bole didn't state; in fact, he didn't say what was covered up, whether it was an under-reamer or a key, or what it might be.

(Testimony of A. G. Willard.)

RDQ. 143. (By Mr. BLAKESLEE.) Did he state to you his object in showing you this, whatever it was, partially obscured?

A. No; I don't remember that he did.

RDQ. 144. Did you ask him what the rest of it was that he covered up? A. No, sir.

RDQ. 145. Did he ever show it to you again?

A. No, sir.

RDQ. 146. Was there any other ball game occasion when these matters were taken up in any way between yourself and Mr. Bole, including the conversation when you were asked whether you did not believe deep down in your heart that Bole was the inventor of this key and you denied such statement?

Mr. LYON.—The question is objected to as misstating the testimony of the witness.

RDQ. 147. (By Mr. BLAKESLEE.) When you were asked whether you had not said that deep down in your heart you believed Bole was the inventor of this key, and denied such statement?

A. We had a number of talks at the ball game before that time and since that time, and there may have been something said regarding this interference.

RDQ. 148. When did you last talk with Mr. Bole about this interference? A. Last Thursday.

RDQ. 149. Where was that?

A. In a machine on the way down to the ball game.

[386—328]

RDQ. 150. Did you attend the ball game with Mr. Bole?



(Testimony of A. G. Willard.)

A. Last Thursday afternoon. Yes, sir.

RDQ. 151. What did Mr. Bole say to you about the interference on that occasion.

A. I don't know as there was very much said. It was kind of referred to, and that is about all.

RDQ. 152. Did he ask you if you were going to testify again in the case?

A. No; I don't think he did.

RDQ. 153. Are you able to state positively whether or not the purported signature of W. H. Fahnestock on Bole's Exhibit January 27, 1911, Sketch, is what Mr. Bole showed you in June of this year at the ball game, when he obscured what was above and beneath such purported signature?

Mr. LYON.—Objected to as leading.

A. No, sir.

RDQ. 154. (By Mr. BLAKESLEE.) Referring now to the testimony of Mr. Bole in this interference, and to question 38 and the answer thereto, in which he states as follows: "But at the same time I told Mr. Willard to go ahead and make up this reamer, and as soon as I got back we would make it up and ship it out." What have you to say as to that?

Mr. LYON.—Objected to as not rebuttal and not redirect examination.

A. I don't remember that part of his letter.

RDQ. 155. (By Mr. BLAKESLEE.) Did Mr. Bole in that letter tell you to go ahead and make up this reamer and at the same time say that as soon as he got back you would make it up?

(Testimony of A. G. Willard.)

Mr. LYON.—Objected to as not rebuttal and as leading.

A. I don't remember of it.

RDQ. 156. (By Mr. BLAKESLEE.) Are you acquainted with August F. Adams, the party who testified in behalf of Mr. Bole? [387—329]

Mr. LYON.—Objected to as not redirect examination.

A. Yes, sir.

RDQ. 157. (By Mr. BLAKESLEE.) How long have you known Mr. Adams?

Mr. LYON.—The same objection.

A. Possibly four or five years.

RDQ. 158. (By Mr. BLAKESLEE.) How did you meet him?

Mr. LYON.—Objected to on the same grounds.

A. In one of our trips to the oil fields I met him at the Maricopa shops.

RDQ. 159. (By Mr. BLAKESLEE.) Did you ever meet him in company with Mr. Bole?

Mr. LYON.—The same objection.

A. Yes, sir.

RDQ. 160. (By Mr. BLAKESLEE.) At any place outside of the shop of the Wilson & Willard Manufacturing Company?

Mr. LYON.—The same objection.

A. Yes, sir.

RDQ. 161. (By Mr. BLAKESLEE.) Under what circumstances?

Mr. LYON.—The same objection.

A. I went out in a machine with him together.

(Testimony of A. G. Willard.)

RDQ. 162. (By Mr. BLAKESLEE.) Have you ever been hunting with him and Mr. Bole?

Mr. LYON.—The same objection.

A. No; I believe not.

RDQ. 163. (By Mr. BLAKESLEE.) Is he a friend of Mr. Bole's?

Mr. LYON.—The same objection.

A. Yes, sir.

RDQ. 164. (By Mr. BLAKESLEE.) Do you know how long he has known Mr. Bole?

Mr. LYON.—The same objection.

A. No, sir. [388—330]

Mr. BLAKESLEE.—That is all.

Mr. LYON.—With the same reservations noted before commencing the cross-examination, I recross the witness.

Recross-examination.

(By Mr. LYON.)

RXQ. 165. Please explain what you mean by your first answer on redirect examination to question No. 112, that you never saw any of the sketches. The reporter will read that question to you now. (Question No. 112 read to the witness.)

A. I don't remember that the sketches accompanied the letter.

RXQ. 166. Then there were no sketches accompanying the letter? A. No, sir.

RXQ. 167. No sketches in the letter, or part of the letter? A. Not that I saw.

RXQ. 168. And you never told Mr. Bole that that reamer would not be built because Mr. Wilson

(Testimony of A. G. Willard.)

didn't approve of it, did you?

A. I may have told Mr. Bole that Mr. Wilson would not approve of it.

RXQ. 169. Please answer the question yes or no.

A. Just read the question again. (Question read.)

No, sir.

RXQ. 170. It is a fact, is it, that Mr. Bole received either a 10 or a 15 per cent commission on the sale of this reamer to the Sunset-Monarch Oil Company in September, 1908? A. I don't know.

RXQ. 171. Have you no recollection as to whether that is a fact? A. None whatever.

RXQ. 172. Are you prepared now to state positively that there was no sketch of any kind, either attached to or a part of this Sunset-Monarch Oil Company order, sent in by Mr. Bole in September, 1908? [389—331]

A. No sketch that I saw.

RXQ. 173. Never saw any such sketch at all, did you? A. No, sir.

RXQ. 174. No sketch of any kind of the key device for that reamer? A. No sketch whatever.

RXQ. 175. You are positive of this, are you?

A. Yes, sir.

RXQ. 176. This Sunset-Monarch order for the under-reamer was for a standard under-reamer that the Wilson & Willard Manufacturing Company were then making? A. No, sir.

RXQ. 177. What was it, then?

A. I don't know.

RXQ. 178. Since thinking this matter over for

(Testimony of A. G. Willard.)

a couple of months, since giving your previous deposition you decided that you didn't know what that order was, did you?

Mr. BLAKESLEE.—Objected to as not properly based upon the testimony of the witness.

A. I don't know definitely what it was; no, sir.

RXQ. 179. (By Mr. LYON.) What is your best recollection?

A. My best recollection was that there was to be some change.

RXQ. 180. Some change in what part of the reamer?

A. In the holding means for holding the block or the key.

RXQ. 181. Your present recollection is that there was no sketch of said holding means, as proposed, accompanying such order from Mr. Bole?

A. Yes, sir.

RXQ. 182. And I suppose your present recollection is that there was no description of such holding means as proposed accompanying [390—332] such order as received from Mr. Bole?

A. There was some mention in the letter that he wanted something changed. There was some change desired, but what that change was I don't know.

RXQ. 183. Are you prepared to state positively that there was not a sketch of such change in that letter? A. Yes, sir.

Mr. LYON.—That is all.



(Testimony of A. G. Willard.)

(Second) Redirect Examination.

(By Mr. BLAKESLEE.)

RDQ. 184. Do you recollect what it was, if anything, that you told Bole, referring to the Sunset Monarch Oil Company reamer order, that Wilson might not approve of?

Mr. LYON.—Objected to as not re-redirect examination, and as not rebuttal, the matter having been fully gone over in the former deposition of this witness, as a part of Wilson's *prima facie* case.

Mr. BLAKESLEE.—The record speaks for itself and the procedure likewise.

A. I told Mr. Bole that Mr. Wilson would object to sending out anything but the standard reamer.

RDQ. 185. Whatever those changes proposed with respect to this reamer may have been, did you ever discuss them again with Mr. Bole or anybody else prior to the early part of February, 1911?

Mr. LYON.—Objected to upon each of the grounds stated in the objection to the preceding question, and as leading.

A. No, sir.

RDQ. 186. (By Mr. BLAKESLEE.) Do you remember whether the letter ordering that reamer for the Sunset-Monarch Oil Company in 1908 said anything about proposed changes in cutter construction? [391—333]

Mr. LYON.—Objected to on each of the grounds stated to the proceeding questions.

A. To the best of my recollection the letter did not refer to cutters at all.

(Testimony of A. G. Willard.)

RDQ. 187. (By Mr. BLAKESLEE.) Do you recollect anything that that letter or order said or proposed in any manner relating to any change specifically in any part of the under-reamer as then manufactured by the Wilson & Willard Manufacturing Company?

Mr. LYON.—The same objection as last noted upon the record.

A. Not specifically, no.

RDQ. 188. (By Mr. BLAKESLEE.) Are you still on friendly terms with Mr. Bole?

A. Yes, sir.

Mr. BLAKESLEE.—That is all.

Mr. LYON.—We move to strike the entire deposition of this witness from the record, and each part and parcel thereof, and each question and answer, on the ground that the same is not rebuttal testimony, and this motion applies equally to the direct, cross, redirect, recross and second redirect, and upon each of the grounds stated in the objections to the questions. This motion will be considered as submitted at the hearing, and notice is given under the stipulation in this case that the reading over of this deposition by the witness, and his signature thereto, is demanded.

Mr. BLAKESLEE.—The notary will comply with such requirement.

Mr. BLAKESLEE.—In view of the continued absence from town of the proposed witness Fahnestock and of the enforced absence from town of the proposed witness Carlson, we are forced to take an ad-

(Testimony of A. G. Willard.)

jourment at this point, namely, at 4:43 P. M., until the following day, and as we are not prepared to predict as to the return of these witnesses definitely, counsel for Bole may have [392—334] his choice of an adjournment until the hour of 10 o'clock A. M. of to-morrow or until the hour of 2 o'clock P. M. to-morrow. We expect the witness Carlson to be able to appear by 10 o'clock A. M. to-morrow, but as he is in Riverside or as we understand he is in Riverside, and has been for several days, we cannot predict definitely, although his plans last Saturday were to return here not later than to-morrow morning.

Mr. LYON.—Let us take an adjournment until 10 o'clock, subject to the further adjournment by telephone notice if counsel finds prior to 10 o'clock that he cannot produce such witnesses.

Mr. BLAKESLEE.—That is satisfactory.

(Thereupon an adjournment was taken until to-morrow, October 6, 1914, at 10 o'clock A. M.) [393—335]

A. G. WILLARD, a witness heretofore produced and sworn on behalf of Wilson, being recalled, testifies as follows:

Direct Examination.

(By Mr. BLAKESLEE.)

Mr. LYON.—We object to the further calling of this witness or any other witnesses in this case who have already heretofore been called in rebuttal, as such piecemeal procedure cannot recommend itself to any tribunal. This witness has already been twice on the stand and has told diametrically oppo-

(Testimony of A. G. Willard.)

site stories, and his examination should be concluded and he should not be brought back time after time.

Mr. BLAKESLEE. — The witness' testimony speaks for itself, and there never comes a time when a witness cannot testify in any case.

Q. 189. I show you, obscuring the title, a number of papers bearing handwriting and other matter, attached together, and I will ask you if you are familiar with any of the handwriting you find on any such papers?

Mr. LYON.—Objected to as leading, incompetent, no foundation laid, and as irrelevant, immaterial, there being no disputed or denied handwriting or signature in this case. There is no foundation for any testimony in regard to said signatures, and such signatures can have no bearing whatever upon this case. This objection will be understood as taken and repeated to any testimony given or questions asked this witness with relation to any handwriting in the case, or to any of the exhibits in the case, without the necessity of hereinafter specifically repeating the same upon the record.

A. Yes, sir; I am.

Q. 190. (By Mr. BLAKESLEE.) Can you state whose handwriting [394—336] any such handwriting is?

A. Miss Laura Dauphine, W. H. Fahnestock, E. C. Wilson and A. G. Willard.

Q. 191. Please point out and designate any instances of the handwriting of W H. Fahnestock that you find there, designating the portions specifically

(Testimony of A. G. Willard.)

which are in such handwriting.

A. On check No. 12252, made out by W. H. Fahnestock, "Pay to the order of W. H. Fahnestock"—the name "W. H. Fahnestock." Check No. 4622 is in the handwriting of Miss Dauphine. Also check No. 5025.

Q. 192. Let me interrupt and ask you, please, to only point out the portions which consist of the handwriting of Fahnestock, and identify such portions by the paper in some way.

A. Check No. 12252, check No. 4367.

Q. 193. Please mention the portions of such checks which are in his handwriting.

A. His name, and also the amount of the checks—the amount in figures. The signature to the trial balance of November 30, 1912.

Q. 194. Do you find any indorsements on any of the checks you have mentioned? A. Yes, sir.

Q. 195. What handwriting constitutes such indorsements?

A. Check No. 4622, check No. 12252, check No. 4367, check No. 5025, check No. 4840, check No. 4738 and check No. 4906 have all been indorsed by the signature of W. H. Fahnestock.

Q. 196. Do you know this person W. H. Fahnestock? A. Yes, sir.

Q. 197. Please identify him.

A. He has been in the employ of the Wilson & Willard [395—337] Manufacturing Company as bookkeeper for the past three or four years.

Mr. BLAKESLEE.—Let it now be shown that the



(Testimony of A. G. Willard.)

papers just submitted to the witness are the group of papers connected together and marked "Wilson's Exhibit C, Specimens of Fahnestock's Handwriting."

Q. 198. I now show you, similarly concealing the indorsements on the back of the last sheet, a number of other papers grouped and attached together, and I will ask you if you are familiar with any handwritings you find there?

A. Yes; I am familiar with the signature of "E. F. Grigsby," who has indorsed checks Nos. 4712, 4795, 4592, 4397 and 5032.

Q. 199. Do you know this party Grigsby?

A. Yes, sir.

Q. 200. Please identify him.

A. He was employed by the Wilson & Willard Manufacturing Company.

Q. 201. At what time?

A. I cannot say positively. I believe it was 1911 and 1912.

Q. 202. That is the same Wilson & Willard Manufacturing Company whom you have referred to in connection with the handwritings of Mr. Fahnestock and of which you were in 1911 vice-president, as you have testified? A. Yes, sir.

Mr. BLAKESLEE.—Let it be shown that the group of papers just submitted to the witness compose "Wilson's Exhibit 'B,' Specimens of Grigsby's Handwriting.

Q. 203. You testified when last upon the stand that your recollection had improved or changed

(Testimony of A. G. Willard.)

somewhat since the time of giving your previous testimony. Can you now assign your reason for such change or improvement? [396—338]

Mr. LYON.—The question is objected to as leading, and upon the further ground that it is merely cumulative, the matter having been fully gone over in the deposition of this witness taken in alleged rebuttal, and it is not examination with regard to any new matter or any omitted fact; and in view of the character of this case and the character of the testimony of the witness, and the procedure of the witness Wilson and of his witnesses in this case, it is clear that this objection should be sustained as a violation of all the rules of evidence and procedure. The witness was interrogated fully in regard to this subject matter when last upon the stand.

Mr. BLAKESLEE.—We have met this argument before, and the record speaks for itself.

A. After reading the testimony of R. E. Bole.

Q. 204. You mean the other party to this interference?

Mr. LYON.—The same objection.

A. Yes, sir.

Q. 205. (By Mr. BLAKESLEE.) What effect did the reading of such testimony produce in your mind?

Mr. LYON.—The same objection.

A. Regarding the sketch or supposed sketch which was supposed to accompany the letter of 1908.

Q. 206. (By Mr. BLAKESLEE.) What did that letter have to do with? That is, what did it relate to?

(Testimony of A. G. Willard.)

Mr. LYON.—The same objection, and the further objection is urged to this whole line of testimony and to all the testimony of this witness heretofore given in this deposition and hereafter to be given, as not rebuttal, and a motion is made to strike the same from the record and exclude it from consideration on this ground, the witness having been fully interrogated on all these matters in his deposition given as apart of the [397—339] *prima facie* proofs in behalf of the party Wilson.

Mr. BLAKESLEE.—We have not finished our interrogations yet.

A. It related to an order for a 9 $\frac{5}{8}$ " Wilson under-reamer sold to the Sunset-Monarch Oil Company.

Q. 207. Did you ever communicate or discuss with Mr. E. C. Wilson, party to this interference, with regard to that order you have just mentioned, or anything connected with it, subsequent to the time the order was taken and filled, and prior to the commencement of this controversy between Mr. Bole and Mr. Wilson?

Mr. LYON.—Objected to as leading, and upon each of the grounds stated in the objection to the question heretofore, and the motion addressed to the preceding question, and the same motion is made in relation to this question and the answer to be given thereto. This matter has been fully threshed out twice in the testimony of this witness heretofore given.

Mr. BLAKESLEE.—The record speaks for itself.

A. Not that I remember.

(Testimony of A. G. Willard.)

Q. 208. When did you first hear of or when did there first come to your knowledge a single-piece key, such as you have testified as now being made as part of the Wilson under-reamer of which we have general example in "Wilson Exhibit Wilson Reamer No. 255"?

Mr. LYON.—Objected to as leading, not rebuttal, calling for a conclusion of the witness and not for a statement of facts, and not the proper method of proof; and as having been already twice gone over by the witness, and not the proper procedure; and a motion is made to strike the question and answer from the record on each and all of these grounds.

Mr. BLAKESLEE.—The record speaks for itself.

A. In the early part of 1911, in the shop of the Wilson & [398—340] Willard Manufacturing Company.

Q. 209. And how did such key then come to your knowledge first?

Mr. LYON.—The same objection as last noted on the record, and the same motion.

A. The key was made in the shop of the Wilson & Willard Manufacturing Company for Wilson reamers.

Q. 210. (By Mr. BLAKESLEE.) When did you first see a drawing or sketch of this Wilson reamer 1-piece key?

Mr. LYON.—The same objection as last noted on the record, and the same motion.

A. January or February of 1911.

Q. 211. (By Mr. BLAKESLEE.) Who made or

(Testimony of A. G. Willard.)

produced this sketch, if you know?

Mr. LYON.—The same objection, notice and motion.

A. I don't know.

Q. 212. (By Mr. BLAKESLEE.) By whom was it shown to you?

Mr. LYON.—The same objection, notice and motion.

A. I don't remember that, either.

Q. 213. (By Mr. BLAKESLEE.) Where did you see this sketch?

Mr. LYON.—The same objection, notice and motion.

A. In the office of the Wilson & Willard Manufacturing Company.

Q. 214. (By Mr. BLAKESLEE.) What was the nature of the sketch or drawing?

Mr. LYON.—The same objection, notice and motion, and upon the ground that it is incompetent, not the best evidence, no foundation laid for the introduction of secondary evidence.

A. As I remember, the first sketch that I saw of a 1-piece Wilson key was after they had been manufacturing the key and a blue-print made of it. [399—341]

Q. 215. (By Mr. BLAKESLEE.) And you refer now to the blue-print?

Mr. LYON.—The same objection, notice and motion.

A. Yes, sir.

Q. 216. (By Mr. BLAKESLEE.) Do you know



(Testimony of A. G. Willard.)

under whose direction this drawing or blue-print was made?

Mr. LYON.—The same objection, notice and motion.

A. No, sir; not positively.

Q. 217. (By Mr. BLAKESLEE.) What is your best recollection as to that?

Mr. LYON.—The same objection, notice and motion.

A. I suppose it was made on the direction of Mr. Wilson.

Mr. LYON.—We move to strike the answer from the record and exclude it from consideration on each of the grounds stated in the objection to the question, and upon the further ground that it appears from the answer of the witness that it is hearsay and the guess or conclusion of the witness and not a statement of facts, and not within his personal knowledge.

Q. 218. (By Mr. BLAKESLEE.) Do you know anything to the contrary?

Mr. LYON.—The same objection, notice and motion.

A. No, sir.

Q. 219. (By Mr. BLAKESLEE.) Who do you believe to be the originator of this 1-piece Wilson under-reamer key we have been discussing?

Mr. LYON.—The same objection, notice and motion; and the further objection that it is incompetent, not the best evidence, calling for a mere conclusion and belief of the witness and not for a state-

(Testimony of A. G. Willard.)

ment of facts, and not within his personal knowledge, and incompetent for any purpose in the case.

A. The first key I ever saw was made at the Wilson & Willard Manufacturing Company. [400—342]

Q. 220. (By Mr. BLAKESLEE.) Have you any belief as to who was the originator of this style of key?

Mr. LYON.—The same objection, notice and motion as noted to the preceding question.

A. I believe Mr. Wilson was the designer of it.

Q. 221. (By Mr. BLAKESLEE.) Which Mr. Wilson?

Mr. LYON.—The same objection, notice and motion.

A. E. C. Wilson.

Q. 222. (By Mr. BLAKESLEE.) You mean the party to this interference?

Mr. LYON.—The same objection, notice and motion.

A. Yes, sir.

Mr. BLAKESLEE.—That is all.

Mr. LYON.—Without waiving any of the objections to the alleged deposition of this witness, but subject to the motion to strike out and exclude the same and each question asked of and answer given by the witness, and to abide by the ruling thereon, I cross-examine the witness, it being understood that any questions asked the witness on cross-examination or answers given by him are subject to the same objection and motion.

(Testimony of A. G. Willard.)

Cross-examination.

(By Mr. LYON.)

XQ. 223. Do you mean to say that you never have at any time talked in any manner with Mr. E. C. Wilson alone or in the presence of anyone else, or talked to anyone else in the presence of E. C. Wilson, in regard to the said letter and order of September, 1908, for said 95/8 under-reamer for the Sunset-Monarch Oil Company? A. No, sir.

XQ. 224. When have you talked with Mr. E. C. Wilson in regard to [401—343] such order and letter? A. After the trouble with Mr. Bole.

XQ. 225. On how many different occasions have you talked with him in regard thereto?

A. I don't remember.

XQ. 226. A number of times?

A. Yes, sir.

XQ. 227. Since your return from your hunting trip, and just previous to your being called as a witness, in rebuttal, in this case, you had a further talk with Mr. Wilson in regard thereto, did you?

A. I met Mr. Wilson in Mr. Blakeslee's office one afternoon. The case was not discussed very extensively.

XQ. 228. The question of this 1908 Sunset-Monarch Oil Company order was discussed, wasn't it?

A. No, sir.

XQ. 229. No mention whatever made of it?

A. No, sir; except in the reading of Mr. Bole's testimony.

XQ. 230. You read that in the presence of E. C.

(Testimony of A. G. Willard.)

Wilson and Mr. Blakeslee, did you?

A. Not all of it; no, sir.

XQ. 231. Parts of it?

A. I think it was mentioned—parts of it were mentioned, as I remember.

XQ. 232. I show you “Bole’s Exhibit Fahnestock Signatures Nos. 2 to 6, inclusive, for Identification,” and ask you to look at them and state whether or not they are the signatures of W. H. Fahnestock.

A. Yes, sir.

Mr. LYON.—The documents just handed the witness are offered in evidence as “Bole’s Exhibit Fahnestock Signatures Nos. 2, 3, 4, [402—344] 5 and 6 respectively.”

(The said documents heretofore offered and marked for identification, are now marked “Bole’s Exhibits Fahnestock Signature Nos. 2, 3, 4, 5 and 6,” respectively, together with the title of the court and cause and the date upon which the same were offered in evidence.)

XQ. 233. (By Mr. LYON.) I also show you “Bole’s Exhibit Fahnestock Signature No. 1.” Is that Mr. Fahnestock’s handwriting signed thereto?

A. Yes, sir.

XQ. 234. I show you “Bole’s Exhibit Sketch No. 1 for Identification,” and ask you to state if that is the signature of Laura A. Dauphine attached thereto?

Mr. BLAKESLEE.—Objected to as not cross-examination and not rebuttal.

A. Yes, sir.

(Testimony of A. G. Willard.)

XQ. 235. (By Mr. LYON.) Are you acquainted with the other signatures upon this exhibit?

A. I have known the witness Harry S. Naphas, but I wouldn't want to say that I was altogether familiar with his signature. But I have seen his signature a number of times, and that looks very much like Mr. Naphas' signature.

Mr. LYON.—The document just called to the attention of the witness is offered in evidence as "Bole's Exhibit Sketch No. 1."

(The said sketch, heretofore offered and marked for identification, is now marked "Bole's Exhibit Sketch No. 1," together with the title of the court and cause and the date upon which the said sketch was offered in evidence.) [403—345]

XQ. 236. (By Mr. LYON.) Is it still your intention to now testify in this case that you now recollect that in this order of the Sunset Monarch Oil Company for a 9<sup>5</sup>/<sub>8</sub> reamer in September, 1908, there was neither any description or suggestion of any changes or modifications to be made in the reamer, or any sketch or sketches or any such modifications or changes accompanying such order as the same was received from Robert E. Bole by the Wilson & Willard Manufacturing Company?

Mr. BLAKESLEE.—Objected to as not the proper method of proof, and merely an attempt to summarize or modify the summarization of testimony.

A. The question calls for more than one answer.

XQ. 237. (By Mr. LYON.) Answer it, then.

Mr. BLAKESLEE.—I add to the objection that



(Testimony of A. G. Willard.)

it is calling for a plurality of answers.

A. I am still positive that there was no sketch accompanying the letter of 1908. However, there was some mention of a change, that did accompany the letter.

XQ. 238. (By Mr. LYON.) According to your best recollection how was that change referred to or made manifest, either in or in connection with such order?

A. Well, I thought about it a great deal, Mr. Lyon, and I have not been able to form any recollection of it at all regarding the change. I do remember, however, that there was some suggestion in the letter, and that is as far as I can testify.

Mr. LYON.—That is all. [404—346]

Redirect Examination.

(By Mr. BLAKESLEE.)

RDQ. 239. Have you any recollection of what this possible change concerned?

Mr. LYON.—Objected to as not rebuttal, and having been fully gone over with the witness twice, and upon each of the grounds stated in the objections to the questions asked this witness on direct examination, and it is subject to the same motion to strike out and exclude it from consideration; and this will be understood as taken and repeated to each question asked and answer given by the witness on redirect examination, without the necessity of repeating the same upon the record.

A. Absolutely none.

Mr. BLAKESLEE.—That is all.

(Testimony of A. G. Willard.)

Mr. LYON.—That is all. The witness will read over and sign this deposition.

Mr. BLAKESLEE.—The notary will see to this finality. [405—347]

Redirect Examination.

(By Mr. BLAKESLEE.)

Q. You have stated that you have always been quite personally friendly with Mr. Robert E. Bole.

Mr. LYON.—That is not cross-examination.

The COURT.—I don't think that is a proper question.

Mr. BLAKESLEE.—It is to show the relation of the parties.

The COURT.—But are you attempting to impeach him?

Mr. BLAKESLEE.—No, sir.

The COURT.—Then it is not proper to ask a question of that kind.

Mr. BLAKESLEE.—Quite the contrary; it is to show that the testimony, if it might have been inclined in either direction to either of these parties, it would more naturally have inclined toward Mr. Bole.

The COURT.—Answer the question. Are you and Mr. Bole friends? A. Yes, sir.

Q. How long have you been friends?

A. I have known Mr. Bole for seven or eight years, at least.

Q. Have you ever had and differences of opinion or falling out?

A. Not till this interference came up.

(Testimony of A. G. Willard.)

Q. When was that?

A. I think the testimony was taken last June or July, somewhere.

Q. When was the difficulty, before or after that?

A. After that.

Q. (By Mr. BLAKESLEE.) Before you gave your last deposition for Mr. Wilson, you were very friendly, and, in fact, attended a ball game with Mr. Bole just before giving that deposition, didn't you?

The COURT.—That is going too far, Mr. Blakeslee.

The WITNESS.—If your Honor would permit me, I would like to [406—348] state that I never had any words with Mr. Bole, at all.

Q. (By the COURT.) There is no feeling of antagonism between you? A. No, sir.

Q. Controversy? A. No, sir.

Recross-examination.

(By Mr. LYON.)

Q. I think it sufficiently appears from your testimony in the interference, Mr. Willard, but it is a fact, that you are engaged in litigation at the present time with Mr. Edward Double, one of the complainants in this suit? A. Yes, sir.

Q. And in several suits pending in this court in regard to infringements of patents?

A. Yes, sir; with Mr. Edward Double. Yes, sir.

Q. And to what extent is Mr. E. C. Wilson indebted to you at the present time in regard to the purchase of your stock in the Wilson & Willard Manufacturing Company?

(Testimony of A. G. Willard.)

Mr. BLAKESLEE.—We object to that as not proper recross, and immaterial; and an improper inquiry into the personal affairs of the witness.

The COURT.—That is going too far. Is Mr. Wilson indebted to you? A. Yes, sir.

The COURT.—That is all that is necessary.

Q. (By Mr. BLAKESLEE.) And that indebtedness is in the matter of the purchase by Mr. Wilson of a certain patent interest, is it not?

A. No, sir; it is my interest in the Wilson & Willard Manufacturing Company. [407—349]

Q. And there is no other indebtedness to you from Mr. Wilson? A. No, sir.

Q. Simply concerning the selling out of your interest in that business to Mr. Wilson?

A. Yes, sir. [408—350]

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*In the United States District Court, Within and for  
the Southern District of California, Southern  
Division.*

IN EQUITY—No. B—19.

ROBERT E. BOLE and EDWARD DOUBLE,  
Complainants,

vs.

WILSON & WILLARD MANUFACTURING  
COMPANY and E. C. WILSON,  
Defendants.

# **Reporters' Transcript.**

## **VOLUME II.**

Filed Apr. 21, 1915. Wm. M. Van Dyke, Clerk.  
By Chas. N. Williams, Deputy Clerk. [409]

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[**Testimony of William H. Fahnestock, for Defendants.**]

WILLIAM H. FAHNESTOCK, a witness produced on behalf of defendants, being first duly sworn according to law, testified as follows:

Direct Examination.

(By Mr. BLAKESLEE.)

Q. Please state your full name, age, residence and occupation, Mr. Fahnestock.

A. William H. Fahnestock; age, thirty-six; occupation, bookkeeper for the Wilson & Willard Manufacturing Company, and residing at 6647 Selma Street, Hollywood.

Q. How long have you been bookkeeper of that company? A. Since September 28, 1910.

Q. Have you with you the ledger account of that company? A. Yes, sir.

Q. In that ledger account is there an account pertinent to the manufacture of Wilson under-reamers and the distribution of the profits of manufacture of such reamers?

Mr. LYON.—We object to that on the ground that it is irrelevant and immaterial.

The COURT.—I don't understand that we are taking an account of profits now.

Mr. BLAKESLEE.—I simply wish to show in corroboration of the testimony of E. C. Wislon by the books of the company that in 1911 and 1912 Mr. Wilson was the only party interested in the reamer business there whatsoever, and that in no way can Mr.

(Testimony of William H. Fahnestock.)

Bole claim that he was associated with that business whatsoever.

Mr. LYON.—That is a mere negative question.

Mr. BLAKESLEE.—I want to show who was the reamer man in that business. That is positive. No claim. In other words, that no claim can be made that Mr. Bole can ride in on this reamer business as being jointly interested, and this reduction to practice having been made constructively on his behalf.  
[412—351]

The COURT.—Do the books show an account concerning this reamer?

A. Yes, sir. It is known as the “Under-reamer Account”—

Q. And who gets credit?

A. This under-reamer account is the same as the personal account of E. C. Wilson.

Q. Does it show that?

A. Yes; that is, all the charges against that account are charged against the reamer account, and also the profits go to that account. It is really a personal account of E. C. Wilson.

Q. What do the books show about its being his personal account?

A. Well, it is made out as the “Wilson Under-reamer Account.”

Q. Just called the “Wilson Under-reamer Account”?

A. Yes, sir.

Q. Have the books got connected in any way E. C. Wilson with it?

A. Yes, sir.

Q. Let us see what it is.

(Testimony of William H. Fahnestock.)

A. Here in the index I have "E. C. Wilson, Manufacturer." "E. C. Wilson Under-reamer Account."

Q. Does that refer to this account? Where is that in the index? A. 226.

Q. It says, "E. C. Wilson Under-reamer Account"? A. Yes, sir.

Q. Then this ledger shows that there is an account kept here with the "E. C. Wilson Under-reamer Account" and it is indexed under the name of "E. C. Wilson, Manufacturer"?

A. That is all one and the same thing.

Q. The same account? A. Yes, sir.

Q. Which is on page 226? A. Yes.

Q. The index shows that fact? [413—352]

A. I believe in the beginning it was called the "E. C. Wilson Manufacturing Account."

Q. (By Mr. BLAKESLEE.) And that account includes the years 1911 and 1912?

A. Yes, sir.

Q. Does the name of Robert E. Bole appear any place in connection with the items of that account?

Mr. LYON.—Objected to as not the best evidence.

The COURT.—The objection is sustained.

Q. (By Mr. BLAKESLEE.) To whom do the proceeds of this account go?

A. E. C. Wilson.

Q. And speaking of E. C. Wilson and the Wilson & Willard Manufacturing Company, you have meant the defendants in this case, have you?

A. Yes, sir.

Mr. BLAKESLEE.—That is all.

(Testimony of William H. Fahnestock.)

Mr. LYON.—No questions. I ask that the witness remain in attendance. We will probably desire to use him later.

Mr. BLAKESLEE.—Do you think you will need him to-day? We will produce him at any time you want him.

Mr. LYON.—I want him here so that when you close I will have a witness. I don't know what you have in the line of your case. If you assure me that you will take the rest of the afternoon, I will excuse him until to-morrow morning.

Mr. BLAKESLEE.—I don't think we will take ten minutes. One other witness is on the way here, and we are ready to produce several witnesses who will testify that they took all their instructions from Mr. Wilson indirectly, and through Mr. Knapp, foreman, as to the making of that first reamer, if your Honor does not include that within your ruling that it is negative testimony.

The COURT.—I think it would be negative testimony. I think [414—353] you can ask Mr. Bole when he takes the witness-stand if he gave any instructions concerning this, and if he says he did, you can call witnesses to contradict him.

Mr. BLAKESLEE.—We will reserve it for rebuttal, then we close our case with the exception of one witness, Mr. Houriet, who is on his way here.

Mr. LYON.—I understand that they reserve simply the right to put Mr. Houriet on the stand, and, no one else, and are to be limited to rebuttal evidence.

Mr. BLAKESLEE.—I want to offer this repro-



(Testimony of William H. Fahnestock.)

duction sketch in evidence which Mr. Wilson identified. It has not yet been offered. I offer it in evidence and ask that it be marked "Defendant's Exhibit Wilson Reproduction Sketch of Sketches of Late January and Early February, 1911." [415—354]

[**Testimony of Albert W. Houriet, for Defendants.**]

ALBERT W. HOURIET, a witness produced on behalf of defendants, being first duly sworn according to law, testified as follows:

Direct Examination.

(By Mr. BLAKESLEE.)

Q. Please state your full name, age, residence and occupation.

A. Albert W. Houriet; age, forty-one; machinist; 1674 West Twelfth, Los Angeles.

Q. Where are you employed at the present time?

A. The Wilson & Willard Manufacturing Company, Los Angeles. California.

Q. That is the defendant in this case, as you understand it? A. Yes, sir.

Q. How long have you been employed by that company?

A. It will be six years the 18th of this coming May.

Q. What is the general nature of your employment there? A. Machinist in general.

Q. How early did you work upon a Wilson under-reamer at that shop, such reamer being fitted with a single-piece key for holding the lower end of the spring?

(Testimony of Albert W. Houriet.)

A. On or about the middle of February, 1911.

Q. What did you have to do with the first reamers of that kind that you worked on?

A. I drove the slot in for the key and drove the tee bar also.

Q. And was the key like that of the Wilson under-reamers which are made at the present time?

Mr. LYON.—Objected to as leading and calling for a conclusion of the witness.

The COURT.—Let him answer the question.

A. Not exactly.

Q. (By Mr. BLAKESLEE.) Can you make a simple sketch showing the [416—355] shape of the key as made for the first reamer you remember of that kind—just a rough sketch?

A. This is sort of a rough sketch of it. There are a few notches there which I sawed in with a hack-saw to put a lever in to pry it up. That was the first experiment with it.

Q. And you made those notches? A. Yes, sir.

Q. Please write “notches” at each of those to make it clear where they were.

(Witness does as requested.)

Mr. BLAKESLEE.—We offer the sketch produced by the witness in evidence as “Defendant’s Exhibit 10.”

Q. From whom did you receive your instructions for making such key?

A. Well, the key was brought to me by the foreman, as near as I can remember.

Q. And you made the notches in with the hack-

(Testimony of Albert W. Houriet.)

saw? A. Yes, sir.

Q. Then what did you do with the key?

A. Well, experimented in getting the key in and out. First tried prying it out, but come to find that I couldn't get it out that way; then I accidentally drove a cape chisel in and saw that it raised it up and I could drive it right out.

Q. By the COURT.—What is a cape chisel?

A. A narrow chisel with a pretty good taper to it.

Q. (By Mr. BLAKESLEE.) Which end of the chisel did you drive in?

A. The pointed end. The cape chisel is made similar to a wedge.

Q. Where did you drive that in?

A. Right at the bottom of the key so that it raised the key up.

Q. Then what did you do?

A. Then I told the foreman, "I guess you don't need no lever [417—356] to pry it out. Here is a simpler way to get it out." And I took an old file there and drove that in, and I said, "You take the tang end of a file and drive it in, and then you can drive the key out."

Q. After you found that it would raise the end of the key that way; what did you do?

A. I told the foreman about it.

Q. Who was your foreman? A. Knapp.

Q. Had you ever seen a single-piece key like that driven out this way before?

Mr. LYON.—Objected to as leading.

The COURT.—Overruled.

(Testimony of Albert W. Houriet.)

A. I never had.

Q. (By Mr. BLAKESLEE.) I show you "Defendants' Exhibit 9" and ask you if you ever saw a piece of metal like that before? A. Yes; I have.

Q. When and where did you first see it?

A. I have seen them similar to that at the Wilson & Willard Manufacturing Company.

Q. What was it used for there?

A. It was used first in the old style reamer in pushing up the block to get the set-screws in.

Q. Can you tell more definitely what time it was that you drove this cape file in under the key and lifted it up and then drove the key out?

The COURT.—He called it a cape chisel.

A. Yes, sir. And then I used a file also—tang end of a file.

Q. By Mr. BLAKESLEE.—For the same purpose? A. Yes, sir.

Q. When was it that you used the first of these for that purpose? [418—357]

A. About the middle of February, as near as I can recollect, of 1911.

Q. I show you a batch of slips of paper attached together and ask you if you know anything about them, and, if so, what?

The COURT.—Can't you make the question more definite? Ask him what they are.

Q. (By Mr. BLAKESLEE.) Do any of these slips bear your name?

A. Yes, sir; here is one. Here is my name on the 22d of February, 1911.

(Testimony of Albert W. Houriet.)

Q. What does that slip with that date signify?

A. It signifies I was drilling on reamer 120—8-inch reamer.

Q. On that date?

A. Yes, sir; on that date.

Q. By referring to these slips are you able any more definitely to locate the time when you first drove the cape chisel or file under the single-piece key and raised it up and then drove it out?

A. It was later than this date.

Q. Later than the 22d of February, 1911?

A. Yes, sir.

Mr. BLAKESLEE.—Let it be shown that the witness just referred to a batch or group of slips, being “Defendants’ Exhibit 6.” That is all.

Cross-examination.

(By Mr. LYON.)

Q. You say you drove a slot through the tee bar and through the body of this reamer for the key?

A. Drilled.

Q. How did you do that?

A. Not with the tee bar in the reamer; no.

Q. But you did it separately—each piece separately? A. Yes, sir. [419—358]

Q. How did you do that? How did you drill those slots? A. With a radial drill.

Q. Can you take these time-slips that you have referred to and tell me what date it was that you drilled each one of those slots of that reamer 120?

A. I think I can; yes, sir.

Q. Please do so then.



(Testimony of Albert W. Houriet.)

The COURT.—Will you tell me what slots you are talking about?

Mr. LYON.—I have the tee bar here.

Mr. STEPHENSON.—I would suggest that you take that and illustrate it to the Court with the instrument itself.

Mr. LYON.—This is the slot in the tee bar that we refer to, Mr. Houriet. Is the slot like the one that I put my finger on? A. Yes.

Q. (By the COURT.) The one the key goes through? A. Yes.

Q. (By Mr. LYON.) And the slot that you say you drilled in reamer 120 is the slot that the key goes through and then passes through the slot in the tee bar. Is that correct?

Mr. BLAKESLEE.—Objected to as indefinite unless it relates to the body. A. Yes, sir.

The COURT.—I think we all understand it now. It is a hole that goes through the two pieces and where the key goes through the two pieces.

Q. (By Mr. LYON.) Take these slips and tell us when it was that you did the drilling of those two slots. A. It don't say here.

Q. Here are three more bundles of time slips. I don't know whether they refer to this same matter or not, but you may look at them and see if you find in them what you are looking for.

A. There is nothing in that bunch to indicate that I drilled the tee bar. [420—359]

The COURT.—Mr. Blakeslee, can you help him out?

(Testimony of Albert W. Houriet.)

Mr. BLAKESLEE.—Yes, sir; I will try to.

The COURT.—All right.

Mr. BLAKESLEE.—I think Mr. Wilson can help him better.

Mr. LYON.—We don't object, but I want to test this witness a little bit.

The COURT.—Well, turn the papers over to the witness.

A. Here is one that relates to the tee bar. That relates to drilling the reamer. Here is the one that relates to drilling the tee bar. It is marked on there "Drilling tee bar."

Q. (By Mr. LYON.) Is that when you drilled this slot in the tee bar? A. Yes, sir.

Q. That is, February 23, 1911? A. Yes, sir.

Q. And you finished the drilling of that slot on that day?

A. On that day? I think I did unless there is another time-slip there.

Q. From that one time slip you have no recollection whether that drilling was all done on that tee bar on that one day, have you?

A. Well, yes. I could drill a tee bar in five hours, I think, or less time than that.

Q. Now, let me ask you as to these dates. You have no recollection except as these time-cards show?

A. How is that?

Q. I say that as to these dates you have no recollection except as the time-cards show?

Q. (By the COURT.) You don't remember when it was done unless you look at these papers?

(Testimony of Albert W. Houriet.)

A. No; not definitely.

Q. Have you an approximate idea in your mind independent of these papers of when it was done?

A. No; I have not.

Q. All right. Then we understand it. [421—360]

A. It was done about the middle of February, but as to the exact date I couldn't tell outside of this.

Q. (By Mr. LYON.) Do you know when that slotted tee bar was finished for this reamer 120?

A. Well, I finished it there, because the machine work was done on it before I got it.

Q. Then it was finished prior to March 8, 1911, was it?

A. Why, to the best of my recollection, yes.

Q. On what day was this reamer 120 first assembled with this notch, slotted tee bar and this one-piece key?

A. Well, it was right after I got through with the drilling—right after the 23d or 22d or along there.

Q. When did you drill the body? A. When?

Q. Yes. A. The date of it?

Q. Yes.

A. The date on that slip gives it the 22d of February, 1911.

Q. That was the drilling of the tee bar, wasn't it?

A. The body. No; the tee bar was—I forget just what the date of the tee bar was there.

Q. You have no recollection independently of that, then? A. What is that?

(Testimony of Albert W. Houriet.)

Q. You have no recollection that serves you at all as to that—

A. No; that is too long to remember.

Q. You don't know that all of the slips for that work are here before you, do you?

A. They certainly are, because it shows it there.

Q. Tell us where the slip which refers to the drilling of the slot in the body is.

A. Here is the two slips for drilling the reamer, February 22, 1911. [422—361]

Q. And what is the other one? One is February 22, and what is the other?

A. The other is February 21, 1911.

Q. Then the reamer was assembled, was it, that day, February 22? A. Not that day; no, sir.

Q. When was it?

A. It was assembled around the 24th or 27th, along there, on different days.

Q. Which day was it first assembled with the single-piece key in it?

A. I couldn't just definitely state which date it was, because there were several different days that I worked on it. I didn't work on it all one day; I would work a little one day and come back on it the next day.

Q. Even with these slips before you you are unable to fix the date on which that reamer was first assembled—that reamer 120—with this tee-bar and this single-piece key, are you?

A. I can't fix the date exactly; no, sir.

Q. You gave a deposition in the interference in the

(Testimony of Albert W. Houriet.)

Patent Office in relation to this matter?

A. I think so.

Q. You were asked in that deposition the following question and gave the following answer: "Q. 31. What did you put under it to raise it up? A. Well, just—anything that I remember that I used—I couldn't get it out very handy, and there was a file there and I drove the file in and that raised it up, and I drove it out the other way. Q. 32. How did you drive it out? A. With a hammer. Of course, the handle of the file is tapered, and by raising up the key I could drive it out." You gave that testimony, did you? A. Yes, sir. [423—362]

Q. You were asked this question on cross-examination, were you. "XQ. 50. I suppose, Mr. Houriet, that it was after you had completed this reamer and had it assembled that you, as you say, discovered that you could remove this single-piece key from it by driving the tang end of a file under the key. Is that correct? A. No, sir. XQ. 51. When was it? A. Before that, when I was experimenting with it trying to get the key out. XQ. 52. What was the condition of the under-reamer at that time? A. I had just been working on it and experimenting with that key to get it in and out. XQ. 53. And on how many different days and different times had you been experimenting in getting the key in and out prior to that time? A. That I couldn't say. It must have been a couple of days. I couldn't say just positively. It has been too long ago. But I know I worked on it." That is a correct statement of your testimony?



(Testimony of Albert W. Houriet.)

A. Yes, sir.

Q. That agrees with your recollection of the facts at the time of giving such deposition on September 29, 1914? A. I think it was; yes, sir.

Q. You were asked this question on cross-examination, were you: "XQ. 61. According to your recollection when was it that you did that last work on that reamer and made this discovery, as you say, that you could remove the key by driving in the tang end of a file? A. I couldn't tell; it has been too long ago." That was your testimony at that time?

A. Yes, sir.

Q. And that was true according to your recollection at the time of giving that testimony?

A. Yes; it was as near as I can remember.

Q. You were also asked this question: "XQ. 62. Have you any recollection whatever of the day of the month? A. No; I have not. XQ. 63. Can you tell me whether it was in January, February or [424—363] March or April? A. It has been too long; I have lost recollection of that. I know the work I did." Did you give that testimony? A. Yes, sir.

Q. You were asked this question on cross-examination: "XQ. 81. Will you state positively that Mr. Knapp delivered that key to you? A. Well, I wouldn't say positively, because he may have told the man that forged it to take it and give it to me as soon as he was through with it, but it was the same thing as him giving it to me. XQ. 82. You have no distinct recollection as to who it was that gave you the key at that time, have you? A. No; I couldn't say

(Testimony of Albert W. Houriet.)

positively. XQ. 83. Have you any recollection as to who it was that forged that key? A. Yes. I can't think of his last name, though. It was a fellow that worked there. We always call him Fred Ricker, or something like that." Is that a correct statement of your testimony given at that time?

A. Yes, sir.

Q. "XQ. 91. How many times did you have to try to get this key out of that reamer before you discovered that you could get it out by simply driving in the tang end of a file, as you say. A. I worked at it two or three hours trying to get it out, and possibly longer than that. XQ. 92. In how many different days? A. That I couldn't say." That is a correct statement of your testimony? A. Yes, sir.

Mr. LYON.—That is all.

Defendants rest. [425—346]

**[Testimony of Robert E. Bole, for Plaintiff.]**

ROBERT E. BOLE, called on behalf of complainants, being duly sworn, testified as follows:

Direct Examination.

(By Mr. LYON.)

Q. Please state your name, age, residence, and occupation.

A. Robert E. Bole. Thirty-six years of age. My occupation—I am an experienced machinist and practical mechanic.

Q. In what business are you now engaged?

A. In the manufacture of oil well-pumps.

Q. You are a resident of Los Angeles, California?

A. Yes, sir.

(Testimony of Robert E. Bole.)

Q. How long have you been connected with machine-shop work or mechanical work?

A. Since 1894; I believe about twenty-one years.

Q. Where did you first have your experience?

A. In my father's shop, in Pittsburg, Pennsylvania.

Q. And in what line of business was that?

A. Fishing tools for oil wells.

Q. In other words, the manufacture of oil well machinery? A. Yes.

Q. And when did you come to California?

A. 1901; January.

Q. And what has been your occupation since you came to California?

A. Practically the same line all the way through.

Q. And during all that time, then, or practically all that time, you have been engaged as a machinist or manufacturer of oil well machinery?

A. Yes, sir.

Q. You are now manufacturing oil well-pumps under a patent granted to you and under the business designation of the Bole [426—365] Pump Company, are you? A. Yes, sir.

Q. You heard the testimony of Mr. E. C. Wilson and the testimony of Mr. W. W. Wilson in this case, did you? A. Yes, sir.

Q. Referring, first, to the date of the settlement between yourself and the Wilson & Willard Manufacturing Company of the Bole Pump Company account, the date of which is fixed by Defendant's Exhibit "Bole Exhibit W. W. Wilson Cross-exami-

(Testimony of Robert E. Bole.)

nation Exhibit No. 1 for Identification"—

A. Yes, sir.

Q. —will you please explain what conversation, if any, you had on the date of that settlement with Mr. E. C. Wilson or Mr. W. W. Wilson referring to the single-piece key invention herein in issue? You understand what it is, I believe?

A. Yes, sir. I had no conversation at which Mr. W. W. Wilson was present. I had a conversation with Mr. E. C. Wilson, and the subject at the time, up, was, the settlement of the pump account and this reamer key, and I refused absolutely to give Mr. Wilson the reamer key. That was not a part of the agreement at all. I was to keep that.

Q. You have heard Mr. W. W. Wilson's statement that at that time you said you would do nothing further with it, or words to that effect. What have you to say in regard to that testimony?

A. There is no truth in it whatsoever.

Q. Now, you say you had no conversation with Mr. W. W. Wilson on that day. Was he present during those negotiations which culminated in this agreement to which I have called your attention?

A. I don't think— He was not present until the document was dictated and drawn up. He was called in with Mr. Fahnestock, [427—366] the bookkeeper, to witness it.

Q. Why are you certain of that fact?

A. Because when I went down there I would not—I went down for the purpose of effecting a settlement on this pump account, and I would not talk to

(Testimony of Robert E. Bole.)

anybody except Mr. Wilson and Mr. Willard, and the three of us went into the private office there and settled this thing up. The door was shut.

Q. Was there any mention made at that conversation of this letter of yours of January 17th, 1913? If so, state what was said in regard to it.

A. The subject of the key came up at that time, and Mr. Wilson referred to this article in here where I spoke about the key—that I would take this up with Mr. Wilson instead of Mr. Willard. That was the only thing in here I would deal with him personally on. And he undertook to tell me that he had never talked to me about this—that I had never talked to him about it, that he didn't know anything about it; and at that time he wanted me to waive my rights in this thing, and I would not do it.

Mr. BLAKESLEE.—We move that the question and answer be stricken out as not a statement of fact—merely a resume of the conversation. “State what was said,” in other words.

The COURT.—That is the proper course—is to have the witness state what was said.

Q. (By Mr. LYON.) Please give the words of that conversation, in so far as your recollection serves you to do so, and I mean by that the exact words, so far as you can.

A. I can't recall the exact words. That was the sum and substance of it, just as I have stated.

Q. (By the COURT.) State the substance of the conversation, pro and con.

A. Mr. Wilson asked me about this key matter,



(Testimony of Robert E. Bole.)

and wanted to [428—367] know if I wouldn't throw in this key, this invention, in the settlement of that pump account, and I wouldn't do it. I simply refused to do so.

Q. Who was present then?

A. Mr. Willard, Mr. A. G. Willard.

Q. (By Mr. LYON.) Mr. A. G. Willard, and Mr. Wilson and you were together at that time?

A. Yes, sir.

Q. What clause in this letter— Did you have that letter before you?

A. Mr. Wilson had that letter at that time. He had it personally; he had received it. He didn't have it with him at that time, I don't think. I didn't see it.

Q. Didn't have it present?

A. Didn't have it present. He referred to this clause in the letter.

Q. How long after this letter was written was this conversation?

A. It was the date of that contract. February 1st, I think, that contract is dated.

Q. This letter there—

A. This letter was written January 17th, and received January 16th.

Q. How could that be?

Q. (By the COURT.) It is dated January 17th and marked received January 16th. Do you know how that comes about? The other side didn't explain it.

(Testimony of Robert E. Bole.)

A. I can't explain it, your Honor. I wrote it on January 17th.

Q. (By Mr. LYON.) You have no knowledge of this stamp "January 16, 1913, Received," have you, on this letter? [429—368] A. No, sir.

Q. You never saw that letter with that on until it was offered in evidence in the interference proceeding? A. No, sir.

Q. Now, then, Mr. Bole, when did you first become associated with the Wilson & Willard Manufacturing Company?

A. I can't give the exact date. It was in, I believe, the fall of 1907.

Q. And what were you doing during the month of September, 1908?

A. I went north, to Maricopa, California, to take charge of the shops of the Sunset-Monarch Oil Company.

Q. How did you come to go there at that time?

A. I was employed by the general foreman, Mr. R. L. Heber, by letter, to go up there.

Q. And you left the Wilson & Willard Manufacturing Company, approximately what was the date, in September, 1908? A. The 12th, I believe.

Q. And you went from there to Maricopa?

A. Went from there to Maricopa.

Q. Now, please go ahead and tell us how long you stayed in Maricopa.

A. I was away from the shops of the Wilson & Willard Manufacturing Company, on that trip, from the 12th to the 20th of September. When I got to

(Testimony of Robert E. Bole.)

—I had gone to Maricopa to take this position for a period of about three weeks, or until I could help Mr. Heber out. Mr. Heber was a new general foreman there. Until I could help him get the shops started and put in a new man. I was coming back to Los Angeles then. When I got up there, the superintendent at San Francisco sent a foreman, another man, down from Frisco, to take the same place. And Mr. [430—369] Heber didn't know this until this man arrived. And I didn't want to cause any friction between the general foreman and the manager; so I asked Mr. Heber if he would give me an order for some tools, and pay my expenses,—and I secured a job for my brother-in-law at the same time—if he would be willing for us to call it square. He gave me the position for my brother-in-law, and at least to pay my expenses; and he gave me an order for a 9 $\frac{5}{8}$ -inch reamer, two sets of cutters, and an order for a 10-inch bull spear.

Q. Did you have any conversation with Mr. Roy L. Heber in regard to what construction of reamer that should be?

A. Yes, sir. When I wanted Mr. Heber to give me an order for the reamer, he said they had had so much trouble with that reamer that they didn't want it, they didn't want to use it any more. And I explained to him that I thought we could overcome that difficulty, and I didn't just at that time, but I worked out a different style of reamer, and that is this reamer that they are using now, this reamer here.

Q. You mean like Defendants' Exhibit No. 1?

(Testimony of Robert E. Bole.)

A. Yes; Defendants' Exhibit No. 1.

Q. Well, please state your conversation that you had with Mr. Roy L. Heber at that time, or the substance of it.

A. I showed him how I could make this key and put it in this reamer, and explained to him how it would overcome this difficulty he had had of his pins freezing and having had to drill them out. And he gave me an order on the strength of my recommendation.

Q. (By the COURT.) Now, when was that?

A. That was in September, 1908.

Q. 1908?

A. Yes; it was about the 16th, 17th, or 18th, I think. [431—370]

Q. (By Mr. LYON.) Now, you say "you explained to him." Please tell us what you did to so explain to him, and what you said.

A. I drew out on a piece of paper a sketch of this key to show him; showed him how it could be put into the reamer, how it could be taken out; showed him all about it as I had desired to make it, had wanted to make it.

Q. Did you tell him how it would work at that time? A. Yes, sir.

Q. Now, tell us what you said to him as to how it would work.

A. Well, I told him that by putting this slot in and leaving space enough to get the key in it could be driven right in from the side of the reamer and when they got it in there the projection at the bottom

(Testimony of Robert E. Bole.)

would snap down into the bore of the reamer, and the tension of the spring would hold it in place, and it could be taken out by simply driving a drift at one end and prying it up at the lower edge of the opening and it could be driven out from the opposite side.

Q. When you say "driving a drift," what do you mean by "drift"?

A. A drift or punch; anything pointed that would fit in under there.

Q. I only asked that question so that the Court might understand what you meant by the word "drift." Now, after having this conversation, you say Mr. Heber gave you an order for a  $9\frac{5}{8}$  inch reamer.

A.  $9\frac{5}{8}$  inch reamer, with an extra set of cutters—a set of cutters for a  $9\frac{5}{8}$  inch reamer and a set of extra cutters for a 10-inch reamer.

Q. And what did you do with respect to such order?

A. I made out that order and mailed it to Mr. Willard in Los Angeles. [432—371]

Q. What Mr. Willard?

A. Mr. A. G. Willard. He was then manager of the shop of the Wilson & Willard Manufacturing Company.

Q. To what place in Los Angeles was such letter addressed?

A. I think at that time Mr. Willard was getting his mail at his house, at his residence, West Thirty-seventh Place.

Q. Do you know what became of that order or let-



(Testimony of Robert E. Bole.)

ter? A. I do not.

Q. Please go ahead and tell us how you made up such order and what it contained.

A. I wrote this letter to Mr. Willard, and, as I went along in the letter, I made little descriptions or drawings, as was a custom of mine. I didn't send any drawing of it—any separate drawing accompanying it. The description was not among the written matter. As I went along in the letter I described how I wanted this made, and I told him to start to work on the body of the reamer, and they wanted it to be shipped up immediately, as soon as it was completed, and that when I got back to Los Angeles, as the key was the last thing fitted to a reamer, that we could finish up the job and put this key in and send it up there, and I would explain to him more fully how I wanted it, but to start in and make the reamer body itself.

Q. Did you, at that time or any other time, explain this single-piece key device to anyone else?

Mr. BLAKESLEE.—Objected to as calling for a conclusion. Let him be asked as to what he did.

The COURT.—If he had any conversation with anybody else, let him state who it was and what was said.

A. Yes, sir; there was a machinist at the shops of the Sunset-Monarch Oil Company, Mr. Adams.

Q. (By Mr. LYONS.) What is his first name?  
[433—372]

A. Gus Adams. And I told him, after I received this order from Mr. Heber that I was going to send

(Testimony of Robert E. Bole.)

up this reamer; and he was not very enthusiastic about it. He found fault with it, and when I explained that—he thought it was the old-style reamer, and when I explained this new reamer to him he was very much pleased with it.

Mr. BLAKESLEE.—We ask that the answer, and each part and parcel thereof, be stricken out as not responsive to the question, not a statement of the facts—merely a conclusion as to a purported conversation. Let us be told what was said.

The COURT.—Your objection is that it does not state the substance or the words?

Mr. BLAKESLEE.—Yes; it does not state the words. It merely states the conclusion of the witness as to what the conversation was.

The COURT.—Objection sustained. State what you said and what the other man said.

Q. (By Mr. LYON.) Giving the words of the conversation as nearly as you can.

A. Mr. Adams said that the pins would freeze in the side of the reamer, and he had so much trouble, or they had had trouble, with all their Wilson reamers along that line. I explained it to him, and drew with chalk on his lathe this new-style reamer that I had gotten up.

Q. (By the COURT.) You mean the new-style key?

A. This new-style key that I had gotten up.

Q. (By Mr. LYON.) Tell us what you drew there, now, in words.

A. I drew a sketch of this key that is now in this

(Testimony of Robert E. Bole.)

reamer here—practically the same.

Q. Well, can't you describe the sketch as you made it?

Mr. BLAKESLEE.—We object to the answer as not responsive.

The COURT.—Objection sustained.

Q. (By Mr. LYON.) Describe to us the sketch that you made at that time on the lathe. [434—373]

A. You mean for me to describe the key itself?

Q. Whatever you sketched.

The COURT.—The lines of what you drew.

A. I could make a sketch of it, but I can't describe it very well. It is a gib-key. It has a projection at the lower half; and it has a projection at the lower half; and it is a sort of a square projection, I would call it, which would extend down into the body of the reamer. It goes into a slot in the side of the reamer.

Q. You say that you could make a sketch in reproduction of what you showed Mr. Adams in chalk on the lathe. Take a piece of paper and make such a sketch. (Witness draws on paper.) Now, you have made a sketch, with a key, in reproduction of the key that you made for Mr. Adams?

A. Yes, sir.

Mr. LYON.—We offer this in evidence as Complainants' Exhibit "C."

The COURT.—It will be received in testimony. Any objection?

Mr. BLAKESLEE.—No objection.

Q. (By Mr. LYON.) Now, proceed, Mr. Bole, and tell us what else was said, by Mr. Adams or by

(Testimony of Robert E. Bole.)

yourself, at that conversation, giving the words of the conversation, if you can, if not, its substance.

Mr. BLAKESLEE.—Objected to as leading, in assuming that anything further was said.

Mr. LYON.—I interrupted the witness to make the sketch.

A. Mr. Adams thought it was an excellent idea.

The COURT.—Strike that out.

Mr. BLAKESLEE.—We move to strike that out.

Q. (By the COURT.) State what he said.

A. Well, he said it was an excellent idea. [435—374]

The COURT.—It may seem to be absurd, but the law requires it to be stated that way.

A. (Continuing.) Well, that was practically all the conversation, because Mr. Adams hadn't anything to do with the order.

Q. (By Mr. LYON.) Now, after receiving this order and sending in this written order for the under-reamer to the Wilson & Willard Manufacturing Company, or Mr. A. G. Willard, where did you go? A. I went from Maricopa to Coalinga.

Q. I show you a piece of paper and ask you if you have ever seen it before? A. Yes, sir.

Q. What is it?

A. It is a postal card I mailed to Mr. Heber, the general foreman at Coalinga, on September 19, 1908, by the postmark on it. It was received in Coalinga on September 20th, by the postmark on it.

Mr. LYON.—We offer this postal card in evidence as Complainants' Exhibit "D."

(Testimony of Robert E. Bole.)

Mr. BLAKESLEE.—No objection.

Q. (By Mr. LYON.) You say you returned to Los Angeles on September 20, 1908? A. No, sir.

Mr. BLAKESLEE.—Objected to as leading. Let the witness tell when he returned.

Mr. LYON.—Well, I thought he had stated.

Q. (By the COURT.) When did you return to Los Angeles?

A. I think it was the 20th I was back in Los Angeles.

Q. 1908? A. 1908.

Q. (By Mr. LYON.) And did you see Mr. A. G. Willard upon your return? [436—375]

A. Yes, sir.

Q. Did you take up with him the matter of this order of this under-reamer? A. I did.

Q. Did you have any conversation with him in regard to it? A. Yes, sir.

Q. What? Please state such conversation, or the substance thereof.

A. Mr. Willard said that he had taken the matter up with Mr. Wilson at Bakersfield; that Mr. Wilson would not make this reamer, and that he said that—

Q. (By the COURT.) Do you mean “key” when you speak about “reamer”?

A. Well, he would not make a reamer with a tee bar and key like this one I wanted to order.

The COURT.—All right.

A. (Continuing.) He said he had made some twenty-five or twenty-six reamers with that style of tee bar in, and that they were weak, and broke, and



(Testimony of Robert E. Bole.)

that Mr. Wilson believed he would call or write the Sunset-Monarch Oil Company and explain this to them, but that he would not make it, and Mr. Willard tried, that is, he made the effort to convince me of the fact that the reamer with this style of tee bar in it was a weak construction and would not stand.

Q. (By Mr. LYON.) What was done, if anything, towards filling the order that you had given for such reamer for the Sunset-Monarch Oil Company?

Mr. BLAKESLEE.—Objected to as leading—assuming anything was done. Let the witness tell whether or not, in the first place, anything was done.

The COURT.—Objection sustained. [437—376]

Q. (By Mr. LYON.) What became of the order of the Sunset-Monarch Oil Company to which you have referred?

A. The order was filled with a reamer of the block and screw type. Mr. Willard said that Mr. Wilson wouldn't stand for any changes whatsoever, and the other reamer of the block and screw type was sent up.

Q. Now, did you ever, at any time, have any conversation with Mr. E. C. Wilson with reference to such Sunset-Monarch order?

A. Yes, sir. When he came down from Bakersfield—I don't remember when he came down. He was at that time in the employ of the Bakersfield Iron Works, and I don't remember. He came down to Los Angeles on different occasions. I didn't know him very well. And later on I took this mat-

(Testimony of Robert E. Bole.)

ter up with him and asked him why he would not make this key in this manner. And he insisted that it would be poor construction to make a tee bar in that manner, and that by leaving the space of the key which would let the key in, it would injure the working parts of the reamer. He would not listen to it at all at that time.

Q. You have heard his testimony that on February 1st, 2d or 3d, 1911, he called a conference in the shop of the Wilson & Willard Manufacturing Company of some of the men, consisting of A. G. Willard, W. W. Wilson, Charles E. Wilcox, yourself, and possibly William K. Knapp, the foreman, and that at that time he exhibited to you and the parties present a sketch of this single-piece key, etc. What have you to say in regard to such alleged facts?

A. There was no such conversation whatever, no such conference whatsoever.

Q. Did you, at any time after 1908, talk with Mr. E. C. Wilson in regard to this single-piece key construction for a reamer?

A. Many times. [438—377]

Q. Do you know anything about how it happened that the Wilson & Willard Manufacturing Company, or E. C. Wilson, took up the manufacture of a reamer, or the making over of a reamer, embodying this single-piece key construction, in 1911?

Mr. BLAKESLEE.—Objected to, as calling for a conclusion.

A. Yes, sir.

Q. (By Mr. LYON.) Please state what facts

(Testimony of Robert E. Bole.)

you know in that regard.

A. Mr. Wilson had been having considerable trouble with the reamer he was using, at that time—that is, “up to that time,” I mean about the 1st of Janaury, up to the 1st of January, 1911. The sales had been falling off in the different fields, and he was having considerable trouble with the reamers. That is, the reamer block and screw type he was using. And he said to me one day there, he says, “I don’t understand why it is that they have so much trouble with this reamer.” I said to him, “Why don’t you make that reamer that I desired for the Sunset-Monarch Oil Company, the one that was ordered by the Sunset-Monarch Oil Company?” He says, “It seems to me Mr. Willard and I had some correspondence about that, didn’t we?” I said, “You certainly did.” He said, “What was that like?” And I had to explain it to him again. He had forgotten all about those conversations, I suppose. At any rate, he asked me to explain it to him again. And I got down on the floor and with a piece of chalk showed him how I could make this one-piece key and put it in the reamer and take it out. And he said, “The trouble with that tee bar is it is weakly constructed,” and I said, “You can strengthen that by increasing the size of it and flattening out the spring to accommodate it.” At that time they were using the round springs; the material they were made of was round material. By flattening it out he could get more space to put in a heavier tee bar. [439—378]

(Testimony of Robert E. Bole.)

Q. (By the COURT.) That is, making the shape of the spring rectangular instead of round, or flat instead of round?

A. Oval, instead of round.

Q. Round? A. Yes.

Q. (By Mr. LYON.) Take the defendants' spring, No. 1, and show the Court what you mean by flat instead of round.

The COURT.—I think I understand it now.

A. (Continuing.) I would call that a rectangular rod. It is that coil.

Mr. LYON.—That is correct. We interrupted you.

Q. Finish your answer with reference to the procedure, please.

A. (Continuing.) And that we could add strength to the key by making it deeper.

Q. (By the COURT.) What do you mean by "deeper"? You mean the width of the key?

A. Through here.

Q. The width? A. Yes.

Q. All right.

A. It was one of those two-piece keys, and he didn't believe, at the time, that key could be gotten out, and he insisted it could not be gotten out. I took the matter up with him on several occasions.

Mr. BLAKESLEE.—We object to the statement of what he didn't believe. We want to know what he said, if anything.

The COURT.—Surely; the witness ought to say that. At any rate, his testimony will not amount to

(Testimony of Robert E. Bole.)

much unless he does state what was said.

A. (Continuing.) He said that he didn't believe it could be taken out. And I argued with him, and this matter was taken up [440—379] on several different occasions. I took it up with him and tried to convince him, and he said it would have to be pried out; and I told him, at the time, a drift could be driven in under the key, and it be raised on one side and the key driven out from the other side. It was a simple proposition on the face of it, to my notion. There is hardly any other way to take it out.

Q. (By Mr. LYON.) Have you any minutes or memoranda by which you can fix the date of any of these conversations with E. C. Wilson in regard to this single-piece key, as prior to the 1st of February, 1911, for instance?

Mr. BLAKESLEE.—Objected to as leading—fixing the time for the witness.

The COURT.—I don't think that is leading. He can't answer that by yes or no.

A. I have a sketch drawn up and witnessed by two parties, which is for a key—which shows this key.

Q. (By Mr. LYON.) I show you a piece of paper of paper and ask you if you have ever seen it before.

A. Yes, sir.

Q. What is it?

A. This is the sketch I refer to.

Q. When was that sketch made?

A. January 27, 1911.

Q. By whom?



(Testimony of Robert E. Bole.)

A. By myself, with the exception of the signatures.

Q. When was this date, "Jan. twenty-seven, nineteen hundred and eleven" placed on this sketch?

A. On January 27, 1911.

Q. And after making this sketch what did you do with it first?

A. I put it with a lot of other drawings that I had. [441—380]

Q. No; I mean before putting it away. Did you show it to anyone at all?

Mr. BLAKESLEE.—Objected to as leading.

A. After making the sketch?

Q. Yes.

A. I just had had it signed and witnessed by these parties.

Q. Who are the two men whose signatures are attached thereto as witnesses?

A. One is the W. H. Fahnestock, who is the book-keeper of the Wilson & Willard Manufacturing Company.

Mr. BLAKESLEE.—That is assuming they are the signatures of the witnesses. The witness has not stated those are the signatures of any men.

The COURT.—I understand that is what he is trying to do now.

Mr. BLAKESLEE.—They may be tracings, and and not the names of anybody.

A. Those are signatures put on there by Mr. W. H. Fahnestock and Mr. E. F. Grigsby.

Q. (By Mr. LYON.) At what time?

A. January 27, 1911.

(Testimony of Robert E. Bole.)

Q. How did they come to sign?

A. At my request.

Q. And where has this sketch been since that date?

A. At that time it was placed—do you want a true history of it? Q. Yes.

The COURT.—We will now take an adjournment until 10 o'clock to-morrow morning.

Whereupon an adjournment was taken until Friday, March 26, 1915, at 10 o'clock A. M. [442—381]

[Testimony of A. W. Houriet, for Defendants  
(Recalled).]

Friday, March 26, 1915, 10 o'clock A. M.

A. W. HOURIET, recalled.

Redirect Examination.

(By Mr. BLAKESLEE.)

Q. With respect to the drilling of the body of this reamer 120 which you have testified about, how was that body drilled for the key?

A. For a new key?

Q. Yes.

A. It was drilled right in line with the mouth of the reamer.

Q. Had the body been drilled before for any key?

A. I think it had been drilled for a key before.

Q. What kind of a key?

Mr. LYON.—We object to that on the ground that it is incompetent, no foundation laid. The witness says he did not even know about it. He thinks so.

The COURT.—Well, it goes to the weight of his testimony.

(Testimony of A. W. Houriet.)

Q. (By Mr. BLAKESLEE.) State what you know, Mr. Houriet.

A. The two-piece key reamer.

Q. And bored again to receive this one-piece key?

A. Yes, sir; redrilled.

Mr. BLAKESLEE.—That is all.

The COURT.—What is this distinction between the hole made in that machine for a two-piece key and this one-piece key?

A. What is the difference?

Q. Yes.

A. Well, the two-piece key was right on top of the reamer and these were on the side of the mouth of the reamer and the cutters put on the side. It was at right angles to what the old [443—382] keys was.

Q. I don't think that I understand that. You mean that they were drilled in across the aperture of the old hole or—

A. Is there a reamer here?

Q. There is one over there.

A. The old hole was drilled through here (illustrating on reamer). The new hole was drilled through here, right in line with the mouth of the reamer.

Q. That is, the hole you drilled crossed the hole where? A. Right there.

Q. And that crossed the hole that was there?

A. Yes, sir.

Q. At right angles?

A. Yes, sir; at right angles.

(Testimony of A. W. Houriet.)

The COURT.—Is that all with this witness?

Q. (By Mr. BLAKESLEE.) Was there any further drilling to your recollection done on the body of this reamer 120—any drilling through the body?

A. It was drilled for a bottom bolt.

Q. And where was that drilling done on the body?

A. Right on the end—the bottom end.

Q. The bottom ends of the prongs?

A. Right at the end.

Recross-examination.

(By Mr. LYON.)

Q. From these time-slips can you tell us which day it was that you drilled it for the bottom bolt?

A. I cannot.

Q. Can you tell us which day it was that you drilled this new key-slot?

A. I cannot. They both went in on the same drilling. That is [444—383] the way I drill them now.

Q. Will you please step over to this “Defendants’ Exhibit No. 1” reamer a moment with us? And in that connection I show you a tee bar which is a part of that reamer. Taking the slot that is in that tee bar, show us in this reamer where that slot lies in there when the tee bar is in place.

A. How the tee bar lays when it is in place?

Q. Yes, sir.

A. It lays in that position, just like that, in the reamer.

Q. And what are these projections on the end of the tee bar?

(Testimony of A. W. Houriet.)

A. Those are ears to hold the cutters up, or lugs, rather. Some call them lugs and some call them ears.

Q. Now, was the tee bar of this reamer 120 that you drilled drilled with this slot in the same direction with relation to the ears or projections as this tee bar which is now before us, and a part of "Defendants' Exhibit 1?" A. It was.

Q. (By the COURT.) Now, I understand that this is the hole that you drilled, the hole in the tee bar to receive this key that is in controversy. Now you have got a new tee bar, or was it an old tee bar that you had to do that with?

A. I think it was a new tee bar.

Q. And you drilled the holes in that in the same direction that these lugs or ears on the end of that tee bar?

A. Yes, sir; to the best of my recollection I did.

Q. On the other tee bar used with the double tee, was that at right angles to those lugs or ears, as you call them?

A. Yes, sir; it would have to be, or else you couldn't get them into the reamer.

Q. (By Mr. LYON.) Do you understand drawings? A. Well, yes,

Q. In doing your drilling of this tee bar at the time you [445—384] speak of, did you have instructions before you, or drawings, as to where that slot was to be placed? A. No, I did not.

Q. I will ask you to examine "Defendants' Exhibit Wilson Exhibit Wilson Reamer Key and Tee



(Testimony of A. W. Houriet.)

Sketch of 1911," and particularly the tee bar sketch therein, and state whether it is not a fact that the slot or key-way in that tee bar is shown at right angles to the projections on the tee bar, and at right angles to the slot in the tee bar of "Defendants' Exhibit 1."

Mr. BLAKESLEE.—Objected to as not calling for the best evidence. The drawing speaks for itself, and the witness testifies he did not have a drawing.

The COURT.—The objection is sustained.

Q. (By Mr. LYON.) Having shown you this drawing, have you ever seen this drawing before—the one I last referred to?

A. No, sir; I have not. Not to my best recollection.

Q. Then the production of this drawing would give you no information or aid you in refreshing your recollection as to the manner of drilling this slot in the tee bar of reamer 120?

A. No, I don't think it would.

Mr. LYON.—That is all.

The COURT.—Now, the defendant rests, I understand, except that he desires to put in some records from Washington. Is that right?

Mr. BLAKESLEE.—I understand that we had rested on our main case prior to Mr. Lyon's calling Mr. Bole, and I understand he was taken off for Mr. Houriet to be recalled; so we are through on our main case.

The COURT.—I thought you wanted some certi-

(Testimony of A. W. Houriet.)

fied copies from Washington?

Mr. BLAKESLEE.—We do wish to put those in, but they have not been received yet.

The COURT.—You reserve that right? [446—385]

Mr. BLAKESLEE.—Yes, sir; we reserve that right. And, of course, we ask the right to take rebuttal as may be proper.

The COURT.—Certainly. Proceed, Mr. Lyon. [447—386]

[Testimony of Robert E. Bole, for Plaintiffs  
(Recalled).]

ROBERT E. BOLE, recalled.

Direct Examination, resumed.

(By Mr. LYON.)

Q. Referring again to the sketch of January 27, 1911, Mr. Bole, what bearing, if any, has that upon your ability to fix the date upon which you, as you say, explained this one-piece key invention to Mr. Elihu C. Wilson?

A. It was prior to this date that I explained this key invention to Mr. Elihu C. Wilson.

Mr. LYON.—We offer in evidence the sketch referred to as “Complainants’ Exhibit E.”

Q. Referring back, Mr. Bole, for a moment, to this letter and order of the Sunset-Monarch Oil Company reamer in September, 1908, you have heretofore made a reproduction of the sketch or sketches contained in that letter, have you? A. Yes, sir.

Q. I show you a paper and ask you if you know what it is.

(Testimony of Robert E. Bole.)

A. Yes, sir; that is a reproduction sketch that I made in testifying in the interference proceeding, of drawings that were made on the letter in which I ordered the reamer for the Sunset-Monarch.

Q. And according to your best recollection is this a true and correct reproduction of the sketches contained in that letter?

A. Yes, sir; a true and correct reproduction according to my best recollection.

Mr. BLAKESLEE.—Objected to as leading. Let him compare them with what he put in the letter and describe what was in the letter.

The COURT.—The objection is overruled.

Q. (By Mr. LYON.) And, in a general way, will you explain to the Court what these sketches are intended to indicate? [448—387]

A. It is intended to indicate the manner in which I wanted the reamer built. These four broken blocks are supposed to be the body of the reamer cut off—the section of the working parts—that I wanted made. This is the key itself as I desired it then, and here is the key in position in the reamer here, held in place by the tension of the spring above it. The dotted lines on the bottom are supposed to be invisible on account of the tee bar being sketched there. It shows the flat spring in place and the tee bar is supposed to be broken above there.

Mr. LYON.—We offer the sketch in evidence as “Complainants’ Exhibit F.”

Q. After explaining this invention to Mr. E. C. Wilson, and after having these talks with him about

(Testimony of Robert E. Bole.)

that, do you know anything at all in regard to a single-piece key device having been built and made and installed in any under-reamer at any time?

A. Yes, sir.

Q. Did you have anything whatever to do with that? A. Yes, sir.

Q. Please tell what you had to do with it.

A. This key was made up under my instructions. I made out a sketch which was attached to the original shop order. I think that went through the pump department; at any rate, the key was built under my instructions. I did some work on it myself in filing and fitting, and I remember distinctly driving the key in place the first time it was put in the reamer. The key at that time, it was uncertain what taper to put on it to drive under the spring. I remember distinctly that this drawing of mine had on this taper "See Bob for the taper," with my name on it at that time.

Q. When you say it referred to the taper, what taper do you mean? I hand you the key of "Defendants' Exhibit 1" so that you [449—388] may illustrate it to the Court.

A. This taper here.

Q. (By the COURT.) At the end of the upper edge?

A. At what goes under the spring and compresses the spring upward, so that this could be placed in or driven in. It was an uncertain quantity, and we didn't know whether it would spring out when we drove it or whether it would go right in. But the

(Testimony of Robert E. Bole.)

first time the taper was put on it it swung back. A light hammer wouldn't drive it in at all. The first one took a sledge to drive it. The taper was too abrupt.

Q. (By Mr. LYON.) Proceed and tell us what you did.

A. I remember it was the morning when the first key was fitted. Mr. Houriet was fitting up the key and attempting to put the key in the reamer while I was fixing a tool to get it out. And I went over—there was a couple of horses or trestles there and this reamer was laying crosswise on it—flat. And Mr. Houriet had a light hammer and had the key and was attempting to drive it in. And I said, "Let me do that, Al." And I took the hammer and I couldn't drive it in. The taper was so abrupt and the spring had so much tension on it that every time you would hit it would fly out. And I said, "We will hit it with a sledge-hammer," and I hit it with a sledge-hammer and the first crack brought it over this hump and it went in place. After this time Mr. Wilson came along; he had not been there that morning.

Q. You mean Mr. E. C. Wilson?

A. I mean Mr. E. C. Wilson. When he came up he looked at it, and I said, "Well, it is in place" He said, "Yes; you have got it in. Now, let me see you take it out." And I had ground up this tool—I have ground it up this morning, something similar to it. I ground up a tool like that which was made out of a file. I broke half of the file off and ground this end,



(Testimony of Robert E. Bole.)

and by driving that under this point it raised that up to a position where this was. [450—389]

The COURT.—You have it wrong side up.

A. No. The reamer was lying on the side. By driving it in this position it raised this point up until it came out of the bore of the reamer, and then by turning the reamer over and hitting it on the opposite side, we could drive the key out.

Q. (By Mr. LYON.) And I understand you, at that time the reamer was lying on its side?

A. Yes, sir; lying on its side, on a couple of trestles.

Q. Was there anyone else present besides Mr. E. C. Wilson at that time? A. Yes, there was—

The COURT.—Besides who?

Mr. LYON.—Mr. E. C. Wilson.

A. Mr. Houriet was there and I believe Mr. Wilcox was there. I am quite positive Mr. Wilcox was there, and Mr. Naphas, my pump foreman.

Q. You heard the testimony of Mr. Houriet that after this reamer 120 was completed he discovered, after some experimentation, that he could remove this single-piece key therefrom by driving a cape chisel under such key. Do you know anything about any such discovery by Mr. Houriet?

A. No, sir. If he did anything like that he did it after I had taken this key out in the first place, and I don't believe it could be done with a cape chisel, anyway, without chipping the bottom of this business here. This would have to be ground. And that is the first key they say they made, and it doesn't

(Testimony of Robert E. Bole.)

show any marks of chipping.

Q. Now, you have seen this diagram of the key which has been drawn at the bottom of "Defendants' Exhibit Wilson Reamer Key and Tee Sketch of 1911." Did you ever see a key like that in any Wilson under-reamer?

A. I never saw a key like that. The first key did not have these notches in the bottom. [451—390]

Q. To what extent did you direct your attention to this Wilson under-reamer in its building after having first shown how this key could be placed therein and removed therefrom?

A. I didn't have anything to do with building the reamer after that.

Q. Do you know whether this key that you first installed in this reamer was the one that was actually used in the reamer thereafter?

A. No, sir; I don't believe it was. That key was too weak.

Q. Wherein was it too weak?

A. Well, it was made to fit the old slot that was in the old reamer, because it was an uncertain quantity. They had not tried it out yet, and it was only to be made up to be tried out. The heaviest thickness in that one-piece key would be the same size as the slot that was in the reamer. That slot was made to fit a two-piece key in. In other words, this key to go into the same space as the two-piece key would be weaker, and this key was afterwards made stronger.

Q. (By the COURT.) You say that the key that was first put in was put in the old hole of the two-piece key?

(Testimony of Robert E. Bole.)

A. Yes, sir; for the two-piece key, and it had to be thinner than this key to go into that hole.

Q. (By Mr. LYON.) Now, take the key of "Defendants' Exhibit 1," and show the Court what you mean by the first key that you made being weaker. Show him the proportions there that you mean.

A. Well, the hole for the two-piece key would have this thickness. Now, to allow this key to come in—

Q. That is the width of the key?

A. To allow this to go in you would have to drill that a lot more to get this projection in. The two-piece key goes in one at a time, and this has to be driven in all at once, which leaves a space at the top, as shown in my sketch there on [452—391] the order from the Monarch.

Q. This two-piece device wedged at the bottom and top of the slot?

A. Yes, sir; at the bottom and top. It filled the slot entirely. This does not fill the slot by the width of his projection at the bottom or possibly a little more.

Q. (By the COURT.) This key would be held in place by the barrel of this machine, and held in place by the spring? Is that right?

A. No; the two-piece key, the top piece of the two-piece key held the lower part in place, and the top part in its turn was held in place by a plug screwed in behind.

Q. (By Mr. LYON.) Yes, but what the Court wants to know is did the lower edge of the lower part of the key and the upper edge of the upper part of

(Testimony of Robert E. Bole.)

the key contact with the barrel or body portion of the reamer in the shape of a wedge.

A. No. The lower portion rested on the bottom; but there was a space in the upper part for the single-piece key. In the two-piece key it was tight all the way through, it fit so perfectly.

Q. Now, you heard Mr. Houriet's testimony this morning, that the key slot in reamer 120 was drilled at right angles to the key slot in "Defendants' Exhibit No. 1," and that the slot in the tee bar that was made for his reamer 120 was drilled in the same direction as the slot in the tee bar of "Defendants' Exhibit 1." What have you to say in that regard?

A. To my knowledge, and I was around there quite a good deal, they never drilled a tee bar other than this shape here until after the building of the first reamer.

Q. You said "this here" and you refer to the drawing "Defendants' Exhibit Wilson Reamer Tee and Key Sketch of 1911," do you? A. Yes, sir.

Q. You are familiar with drawings? [435—392]

A. Yes, sir.

Q. Take that drawing and point out to the Court wherein the direction of the slot in this drawing of the tee bar differs from the slot of the tee bar of "Defendants' Exhibit 1."

A. In this "Defendants' Exhibit 1" the key comes down this way, and in this reamer the key comes this way.

Q. (By the COURT.) The key in controversy goes in at right angles to the way the two-piece key

(Testimony of Robert E. Bole.)

went in? A. No, sir; not in the first reamer.

Q. Well, they do now? A. They do now.

Q. But in the first reamer the key in controversy went in the same hole that was made in the machine to receive the double-piece key? Is that right?

A. Yes, sir.

Q. (By Mr. LYON.) After you returned from Maricopa in 1908 to the shop of the Wilson & Willard Manufacturing Company on or about September 20, as you have stated, did you explain this invention to or talk to anyone else about it other than A. G. Willard and E. C. Wilson? A. Yes, sir.

Q. To whom?

A. I talked to my brother-in-law. I had wired my brother-in-law J. C. Hubbard to come out and take this position at Maricopa that I had gotten for him from Mr. Heber. When Mr. Hubbard came out here I explained and told him about this key, without revising this reamer.

Q. What did you say to him?

A. I told Mr. Hubbard and explained the method of using the reamers —

Mr. BLAKESLEE.—We object and ask that the statement that was made be repeated if the witness knows. [454—393]

A. I said that in California the trouble they had, I told him about the trouble they had.

Q. (By the COURT.) State what was said. Don't state your conclusions.

A. I said I intended to do away with the two screw plugs that were used in the old-style reamer and put



(Testimony of Robert E. Bole.)

in this single-piece key loosely mounted in there, and hold it in place in the reamer by the tension of the spring above; and the cutters were to be suspended on the tee bar—

Mr. BLAKESLEE.—We object to what was to be done.

Mr. LYON.—He said that is what he said was to be done. He is stating the words he used. He says, “I said so-and-so.”

The COURT.—Yes. Proceed and tell *what said*.

A. —as they were used in the present reamer, with the exception, as I say, of taking one of the two plugs and the old block, I was to put in the slot and single-piece key.

Q. (By the COURT.) You mean you told him that?

A. I told him that.

Q. (By Mr. LYON.) Now, Mr. Bole, where did you meet Mr. Hubbard at that time?

A. I met him at the train when he first came here.

Q. For what purpose?

A. He was on his way to take this position at the Monarch shops at Maricopa. Mr. Hubbard was to have testified about that for me, but he is in Mr. Wilson's employ just now.

Q. (By Mr. LYON.) You say Mr. Hubbard is now in the employ of Mr. E. C. Wilson, or the Wilson & Willard Manufacturing Company? A. Yes, sir.

Q. And has been for some time?

A. Yes, sir.

Q. And he was employed by them since this con-

(Testimony of Robert E. Bole.)

troversy arose? [455—394]

A. He was employed by them, I think—he was employed by them right after the closing of the testimony in that interference.

Q. Do you know where Mr. Hubbard is at the present time ?

A. I do not. He is in the employ of the Wilson & Willard Manufacturing Company, or was.

Q. When did you last hear?

A. Three or four days ago.

Mr. LYON.—That is all.

Cross-examination.

(By Mr. BLAKESLEE.)

Q. You were at Maricopa for six or eight days, were you, at the time you proposed to take that job there in 1908?

A. No; I won't say that I was there that long. My time-book that I kept at that time shows that I was away from work from the 12th to the 20th.

Q. How long were you in Maricopa?

A. I can't say that. I think that I went there probably—the 12th came on Saturday. I was about a week.

Q. How long would it have taken you to have made up one of these single-piece keys such as you say you discussed to Mr. Heber and Adams?

A. At the Monarch shops how long it would have taken?

Q. Exactly.

A. It would have taken possibly a half a day or three-quarters of a day.

(Testimony of Robert E. Bole.)

Q. Why didn't you make one up there and try it out?

A. I gave the order to do that to the Wilson & Willard Manufacturing Company.

Q. Well, they could have used such a key up there to have remedied the troubles they were telling about that they were [456—395] having with the two-piece keys, etc.?

A. No, it is a very difficult matter to drill out that slot in the side of the reamer.

Q. Why was it difficult?

A. Well, it takes a very delicate reamer.

Q. A delicate reamer to ream out the hole?

A. A delicate little rose reamer to ream out the hole. At that time we did it that way. I don't know whether they drill them and drift them now or not.

Q. Didn't they always drill them out?

A. No, sir; they put them on the radial drill.

Q. Was there such a drill at Maricopa at the Monarch shops?

A. I don't know. That was not part of my mission up there, Mr. Blakeslee. I was to get what orders I could and take this position.

Q. Well, there was need of such a key there to remedy the trouble that Mr. Heber and Mr. Adams complained about? A. Yes, sir.

Q. Why didn't you make them up such a key and give it to them the same as you should make a repair job on an automobile?

A. It takes more than the key. It takes a flat

(Testimony of Robert E. Bole.)

spring and such as that, as I desired in that letter.

Q. Why does it take a flat spring? Why couldn't you use a single-piece key in place of the double-piece key?

A. I knew at that time that that split tee bar, as we called it, the construction was weak.

Q. All right. But if one was still standing up, it could be used with a single-piece key as well as the two-piece key?

A. Mr. Blakeslee, to build the reamer as you suggest now, it would take practically a special equipment. Mr. Wilson has special machinery for that.

Q. Yes. But there were two-piece key Wilson reamers in and [457—396] about that field, and they were working about them and repairing them and using them on their own wells, were they not?

A. I don't know whether they had any two-piece key reamers on there. I don't know what they had there except these reamers of the block and screw type. Those were the ones that gave the trouble.

Q. You heard Mr. Heber and Mr. Martin testify on your behalf? A. Yes, sir.

Q. Didn't you hear them say they had trouble with these two-piece reamers, also?

A. I don't recall that.

Q. Assuming that they did, would it not have been possible to substitute a single-piece key of the new design which you originated, as you say, for the two-piece key which had been used in the reamer before?

Mr. LYON.—I object to that. It is a mere suppo-

(Testimony of Robert E. Bole.)

sition. It is not shown that at the time he was there there was a two-piece key reamer there. They may at some time previous to it or after *that had* them, but it is a mere supposition.

The COURT.—The objection is overruled.

A. I don't know that I would have any authority to put that key at that time or any other kind in anybody's reamer.

Q. (By Mr. BLAKESLEE.) From whom would you expect you should have such authority?

A. I would have to get it from whosever reamer I used it in, Wilson's or Mr. Double's, or whoever had a patent on the bottom part of the reamer I had to use.

Q. You think because there was a patent on the reamer you could not do what you wanted to with such reamer as was purchased by somebody else?

A. I am not well enough acquainted with law, but I should think so. [458—397]

Q. In other words, if you owned an automobile that is patented you think you could not repair it if necessary?

Mr. LYON.—Objected to as calling for a mere conclusion on a question of law.

The COURT.—The objection is overruled.

A. I believe in certain cases. You are only asking for my belief. I don't believe you could. I don't believe anybody could repair my pump that is patented.

Q. (By Mr. BLAKESLEE.) You didn't say to Mr. Hubbard and Mr. Adams that you would have to



(Testimony of Robert E. Bole.)

get the permission of Mr. Wilson, the patentee of the reamer, before the order could be filled with that single-piece key? A. No, sir.

Q. Why didn't you?

A. Because I took the order and sent it in. The Wilson & Willard Manufacturing Company were building reamers and I was selling them on a commission, and I had this position and I wanted to get through with my business there and go to Coalinga and sell some pumps, and there was no occasion for me, as I can see,—

Q. (By Mr. BLAKESLEE.) You didn't ask Mr. Willard to get Mr. Wilson's permission to make that change in the reamer, did you, in the letter you sent to Mr. Willard?

A. I don't recall whether it was in there or not. I don't think it was.

Q. Now, you waited from September, 1908, until the early part of 1911 without attempting to do anything in and about the use of such a single-piece key in the reamer?

A. No, sir. I tried right along to get Mr. Wilson to build that reamer. Between those periods of time that you mention I have told people that I thought I would be able to get that reamer built eventually.

Q. And yet during all that period of time you did not go to [459—398] anybody who was having trouble with assembling or disassembling a Wilson reamer of the two-piece key type and suggest that you could remedy such trouble by providing a one-

(Testimony of Robert E. Bole.)

piece key for such reamer, did you?

A. I was very much interested in my pump business at that time, and I was working as high as eighteen hours a day. I was night foreman for the Wilson & Willard Manufacturing Company, and I didn't have any time to do anything like that. I didn't take time to.

Q. You had time to discuss it with Mr. Wilson, although you were working eighteen hours a day?

A. Yes, sir; when he came to the shop.

Q. During that period of time didn't you find it possible to go to ball games as you did subsequently?

A. No, sir.

Q. Not at all?      A. No, sir.

Q. And you did not attempt to try to get Mr. Wilson's permission, if you thought it necessary, to make over a two-piece key reamer into such a single-piece reamer?

A. That was what I was trying to do—to get Mr. Wilson's permission; to get him to do it.

Q. You were not trying to get him to do it, but were trying, on the contrary, to get his permission to do it yourself?

A. No, sir. I was trying to get him to make it. He was equipped for that purpose.

Q. Did Mr. Wilson ever tell you that there was a patent on such two-piece key reamer?      A. No, sir.

Q. To your knowledge was there ever any such patent issued?

A. To my knowledge there never was.

Q. How long during the period I have last defined

(Testimony of Robert E. Bole.)

were you night foreman of the Wilson & Willard Manufacturing Company shops? [460—399]

A. I can't say that.

Q. Were you night foreman after the business was moved to the new plant at 15th Street and Santa Fe Avenue?

A. No, sir; I don't believe I was working in the shop at that time.

Q. When was it that the shop was moved down there? A. I think about six years ago.

Q. Do you remember the year? A. No, I do not.

Q. Six years would make it 1909, wouldn't it?

A. Six years would make it 1909.

Q. And there would be two years more before 1911 during which you were not night foreman. Is that correct?

A. Well, I won't say positively unless I would look it up.

Q. You would not say positively you were night foreman for those two years at all, would you?

A. No, sir. I think I was night foreman only when I was working nights. The time-books would show that.

Q. It will be assumed that you were not night foreman in the daytime; but you will not say that you were night foreman during 1909 and 1910, would you? A. I don't believe I was.

Q. Now, do you think it would be an invasion of Mr. Wilson's rights to take an under-reamer that was in his shop and put a single-piece key in it?

(Testimony of Robert E. Bole.)

A. It would without any authority from him.

Q. You were working there nights, I suppose, when Mr. Wilson was not there and when nobody would have actually prevented you from slipping a single-piece key into the reamer?

A. Well, it would show up on my time-cards, I should think. I had certain duties to perform.

Q. And these were the reasons, the fear of infringement and [461—400] the fact that you could not persuade Mr. Wilson, and the fact that you were busy, and so forth,—these were the reasons that you did absolutely nothing to try out what you claimed to be your invention from the time you say you disclosed it to Mr. Heber and Mr. Adams in 1908 until you say you had something to do with fitting a reamer in 1911. Is that correct?

A. I had no fear of infringement. I simply would not make it unless I had authority from somebody to do it.

Q. And you didn't think it was sufficiently important to see that somebody fitted any such a reamer for you somewhere?

A. No, but I thought it of sufficient importance to tell people that I thought I would have it made eventually.

Q. If you thought it was of so much importance why didn't you perpetuate the idea by some sketch? That was away back in 1908.

A. Mr. Blakeslee, I thought that was all a matter or record. It is the custom of the Wilson & Willard Manufacturing Company to file the letters and or-

(Testimony of Robert E. Bole.)

ders in the envelope with the time-cards all the way through, and it is the shop custom when you get anything in an order for any new thing, that it is on record. At least that is the general impression around the shop, that if you get anything on a shop order and in the files, that it is a record, and I didn't believe that anybody would ever lay any claim to that but myself.

Q. Did you keep records of that sort in connection with your pump invention?

A. You mean did I keep personal records?

Q. Yes; in your pump business record.

A. Yes, sir. I made out orders from the pump department. They went through the books of the Wilson & Willard Manufacturing Company.

Q. Is it your custom to keep sketches and memoranda of inventions [462—401] you make from time to time? A. Yes, sir.

Q. Have you made any other invention for which you have applied for letters patent since September, 1908? A. Yes, sir.

Q. I am not going to ask you what they are, but can you state approximately how many such applications you filed? A. I would say approximately five.

Q. And were those filed before the application for the patent for the reamer with the key?

A. Yes, sir.

Q. So you filed five other applications for patent from the time you conceived of this invention until the time you applied for the patent in suit?

A. Yes, sir; and they are still pending.



(Testimony of Robert E. Bole.)

Q. Now, you say it was customary for the Wilson & Willard Manufacturing Company to perpetuate and file away orders. Do you know whether Mr. Willard had any such system out at his house at the time you sent in this order as you say in 1908?

A. I don't know.

Q. You say you sent that letter to Mr. Willard's personal address?

A. I don't know that I did. On several occasions I went through the letter files, and I remember that I have written them to his address on West Thirty-seventh Place, and I believe at that time I was sending all his mail there.

Q. I see. Did you not testify yesterday that that is where you sent the letter and that you sent it directly to Mr. Willard?

A. I said that I believed I sent it there.

Q. Now, in the interference proceeding involving your patent in suit, you testified that you mailed a letter to the Wilson & Willard Manufacturing Company ordering this reamer—that is, [463—402] to the company direct—didn't you?

Mr. LYON.—I object to that. Show him the testimony.

A. I probably did.

Q. (By Mr. BLAKESLEE.) This was your testimony given at that time, was it not? “Q. 35. Do you remember when it was that you gave such an order? A. It was during this period of time. I can't just state the date exactly. I went from Maricopa to Coalinga and on our way I mailed a letter to

(Testimony of Robert E. Bole.)

the Wilson & Willard Manufacturing Company at Los Angeles ordering this reamer." You so testified in that case, didn't you?

A. Yes, sir. It was probably sent care of Mr. A. G. Willard on West Thirty-seventh Place. I didn't say positively that that was the case.

Q. That statement made in your previous testimony was correct, was it? A. This statement?

Q. The one which I quoted to you from the previous record. A. Yes, sir.

Q. And your statement made yesterday as to the address of this order letter was not correct?

Mr. LYON.—Objected to as argumentative. There is no conflict in the statement whatever.

(The question is read.)

Mr. LYON.—The question is objected to as not the best evidence, and on the further ground that there is no conflict between the two statements.

The COURT.—Sustained. You can argue the question when we get the facts.

Q. (By Mr. BLAKESLEE.) I will ask you now whether you sent that order to the Wilson & Willard Manufacturing Company or to Mr. Willard.

Mr. LYON.—I object to that question as indefinite and uncertain [464—403]

The COURT.—I have sustained the objection. The witness has testified about that on two occasions and you cross-examined him about it and showed him his previous testimony. That ought to be sufficient.

Q. (By Mr. BLAKESLEE.) Why did you send such an order to Mr. Willard personally?

(Testimony of Robert E. Bole.)

A. I don't believe I sent it to Mr. Willard personally. I believe I sent it to the Wilson & Willard Manufacturing Company, care of Mr. Willard. I believe that. [465—404]

Q. I will show you your testimony of yesterday, question and answer at the bottom of page—Question and answer as follows: “Q. And what did you do with respect to such order? A. I made out that order and mailed it to Mr. Willard in Los Angeles.” Will you please state what you did with that order?

A. Will I please state what I did with that order?

Q. Yes.

A. I mailed it to Wilson & Willard Manufacturing Company in Los Angeles, possibly care of Mr. A. G. Willard. I wouldn't say positively.

Q. Now, was Mr. Heber present in Maricopa in September, 1908, when you made this sketch you say you made with chalk on the body of a lathe for Mr. Adams?

A. I don't know that Mr. Heber was right at the lathe at the time or not. He was backward and forward through the shop. I couldn't say that.

Q. In your previous testimony in the interference, you didn't tell us anything about this chalk key sketch on the lathe, did you?

Mr. LYON.—Objected to as not the proper method of impeachment. You should produce the witness' testimony if you want to ask him.

The COURT.—Objection overruled.

A. I don't remember. I believe I said I made sketches for Mr. Heber and Mr. Adams.

(Testimony of Robert E. Bole.)

Mr. BLAKESLEE.—But you didn't tell us anything about a chalk sketch, did you?

A. You didn't cross-examine me on it.

Q. In your direct examination you didn't say anything about it? A. No; I don't believe I did.

Q. You were present when Mr. Adams testified for you in that [466—405] case, weren't you?

A. Yes, sir.

Q. You heard him then testify that such a chalk sketch was made on the bottom of the lathe for him, didn't you? A. Yes, sir.

Q. Is that the reason you testify to that now?

A. I don't hardly think so. It is just as I remember it, that I made this sketch, got the order from Mr. Heber in the first place. I was explaining this thing to Mr. Adams, and drew this sketch with chalk on the lathe.

Q. You say you testify that you had explained to Mr. Heber that the drift could be driven in under the key to raise it, and then the key could be driven out. At that time did that appear to you to be the best way to handle that key to get it out? A. Yes, sir.

Q. Would that be a better way than using a lever to pry the key up and pry it out? A. Yes, sir.

Q. Why did you come back to the lever idea, or why did you renounce the lifting up and driving out idea and substitute the lever idea in 1911?

A. I didn't substitute it. I drew up this sketch with the lever in it. I was willing to concede anything to Mr. Wilson. The invention was mine. I put that in the drawing and had it fixed in order to

(Testimony of Robert E. Bole.)

add it to the records already of record which I had.

Q. In other words, the invention of the key remover was yours—you hadn't thought of using a lever to pry it out before?

A. Yes, sir. That was mentioned in that letter to Mr. Willard—the driving in of the drifts.

Mr. LYON.—Objected to as not responsive. [467—406]

The COURT.—I think the answer is responsive.

Mr. BLAKESLEE.—Then this sketch was gotten up to show your invention of a key remover, was it?

A. Yes.

Q. It was?

A. It was gotten up to show that I was the inventor of the key and place the date that I did it.

Q. And that was the important thing that you had gotten up that you wanted to perpetuate—that is to say, perpetuate evidence of the fact that you had invented this and not the key remover?

A. I already had it on record at the time, the new style key.

Q. Where was that on record?

A. In the shops of Wilson & Willard Manufacturing Company.

Q. How do you know it was?

A. Well, it was there originally.

Q. When did you see it there?

A. Mr. Willard received the order, as he testified, and filled it.

Q. Did you see the order there in the shop?

A. No, sir.



(Testimony of Robert E. Bole.)

Mr. BLAKESLEE.—Then we ask that the witness' answers as to the orders ever being in the shop be stricken out, as not within his knowledge.

Mr. LYON.—That was on the ground.

The COURT.—Overruled. The motion is overruled.

Mr. BLAKESLEE.—You then thought that on January 27th, 1911, you had invented a new key remover, did you? A. Yes, sir.

Q. Did you think that would be better than the key remover you had brought out in 1908, namely, the system or method of driving a drift under and then driving out the key? [468—407] A. No, sir.

Q. Which did you think was the best?

A. I thought the drift was the best.

Q. And that is what was really adopted finally, wasn't it? A. Well, they called it a drift.

Q. That same thing intended to lift up the key so you could drive it out from the other end?

The COURT.—We will take a recess for five minutes.

(Recess.)

Mr. BLAKESLEE.—You applied for a patent for a pump back in 1906 or 1907, did you not?

Mr. LYON.—Object to that as immaterial and irrelevant.

The COURT.—What is the relevancy of that?

Mr. BLAKESLEE.—I want to show that he applied for a patent within six hours after he conceived of the idea, instead of waiting or something like five years and a half, as he did in this case.

(Testimony of Robert E. Bole.)

Mr. LYON.—It don't make any difference if he did.

The COURT.—Well, while I don't see that it is material, I will overrule the objection.

Mr. BLAKESLEE.—I want to see what he thought of the invention after he got it.

The COURT.—I will overrule the objection.

A. Yes, sir.

Mr. BLAKESLEE.—That patent has been granted?

A. Yes, sir; that invention had been patented.

Q. And that was before you got this key idea?

A. Yes, sir.

Q. That was up in Bakersfield, wasn't it?

A. Yes, sir.

Q. The day you evolved this idea, you went from the shop down to an attorney and immediately took steps to obtain a patent? [469—408]

A. I believe it was the same day.

Q. During the recess, you have had a little talk in the hall with your attorney, Mr. Lyon?

A. Yes, sir.

Q. Can you tell us what it was about?

A. Why, he said, "You are doing all right; take it cool."

Q. What did you say?

A. I don't believe I answered him. Mr. Wilson was walking back and forth there very close, and I understood or thought I understood that he was there to overhear anything that might be said, and I kept my mouth shut from that time on.

(Testimony of Robert E. Bole.)

Q. Before you kept your mouth shut, what did you say?

A. I say Mr. Lyon said, "You are doing fine; take it cool."

Q. Well, hadn't you said anything?

A. Nothing pertaining to this case.

Q. Didn't you say something about a file?

A. No, sir; nothing about a file at all.

Q. Did you ever make up a key and a key remover to fit it that would correspond to the showing of this sketch, Complainants' Exhibit "E"?

A. Didn't make up one.

Q. Why didn't you try out this key remover idea?

A. I didn't think it was any good.

Q. Then you don't think this sketch perpetuates anything really worth while?

A. No, I don't know what value it is in the way of whether it perpetuates anything or not.

Q. So far as anything in this case is concerned, this does not set forth anything that you considered of any particular value?

A. It does. It shows the key prior to any date that Mr. Wilson [470—409] has mentioned that he devised it, so I consider it valuable, yes, sir.

Q. As a matter of fact, you had heard about such a key from somebody before you drew this sketch with this remover, had you not?

A. Key or keys?

Q. Such a key?

A. I didn't hear from anybody else, no, sir. I had discussed it.

(Testimony of Robert E. Bole.)

Q. You had discussed it?

A. Yes, I discussed that key, as I say, but they have mentioned the fact that Bole mentioned it, but I was the original inventor of it, and I never heard anybody say anything about it until I designed it.

Q. If you had such a key as this and such a key remover as this, namely, those features disclosed in this sketch, do you think you could have put the key in the reamer and then taken it out by such remover?

A. I don't know.

Q. Do you think the thing would work?

A. I am inclined to believe that it would bind on top.

Q. Well, I hand you two pieces of metal and ask you to look at them and look at the sketch and see if you can find any discrepancy between the two. Take your time to compare them as to dimensions or any other way.

Mr. LYON.—We object on the ground that it is all immaterial.

The COURT.—Objection overruled.

Mr. LYON.—There is no claim that that is a working drawing.

The COURT.—The pieces of metal submitted are not in evidence, are they?

Mr. BLAKESLEE.—No, sir, not yet. I want to know if it is the same. [471—410]

A. This is practically the same as this (indicating).

Q. Both the key and remover?

A. Practically the same thing; yes, sir.

(Testimony of Robert E. Bole.)

Q. Will you see if that key is the same size as the key in Defendants' Exhibit 1, and if so, place it in that reamer and take it and remove it.

A. It is practically the same size.

Q. Please see if you can remove it from that reamer with that lever.

Mr. LYON.—We object on the ground that it is not cross-examination, and no testimony that that particular lever could remove that key.

Mr. BLAKESLEE.—I want to find out what his purported invention was.

The COURT.—He could not give a practical demonstration without assembling the whole thing.

Mr. BLAKESLEE.—He has got merely to put in the tee bar and then put in the key and draw it out. I don't think it will take long. I want to see what his purported invention is.

The COURT.—What bearing has that on this case?

Mr. BLAKESLEE.—The bearing is this, that he has no single piece of physical evidence that he can produce or has produced pertaining to this main issue of the invention, the key, but he has this sketch which pertains to this purported key remover, which is the only evidence, and I want to say that the only thing he can show us about is something that dates from the time, is a negative thing, in fact, it is a nominal thing.

Mr. LYON.—That don't make any difference. This is simply used as a memorandum to refresh his recollection as to a date.



(Testimony of Robert E. Bole.)

Mr. BLAKESLEE.—And we propose to show that the only thing he ever did in and about this invention was to get up that [472—411] lever and devise it. We propose to show that conclusively before we finish.

The COURT.—I will let him make the demonstration if he wants to.

Mr. BLAKESLEE.—Is it possible to get the hook end of this lever under the key as it is now assembled in this reamer?

(The witness demonstrated with the reamer referred to.)

Mr. LYON.—Let the record show that there is no hammer or any heavy tools present.

A. There is not an opportunity to get it in under.

Mr. BLAKESLEE.—Did you intend to use a hammer in connection with that?

The COURT.—Slip it back until it rests on the—

A. It could be done, I believe, if you had an emery drill to touch this up a little bit more.

Mr. BLAKESLEE.—Did you intend to use a hammer in connection with that key-removing lever when you devised it?

A. Why, yes; that is, if I used it. I don't know that I ever intended to use it.

Q. You got it up not with the intention to use it, but— A. Protect it.

Q. Protect it? A. Yes, sir.

Q. And you never did anything further towards protecting it? A. No, sir.

Q. Did you ever apply for any patent upon it?

(Testimony of Robert E. Bole.)

A. No, sir.

Q. Now, please look at this Defendants' Exhibit 9 and compare it with the little lever you have in your hand, and tell me if there is any preference between the two from your viewpoint for use as a key remover.

Mr. LYON.—Objected to as incompetent, irrelevant and immaterial. [473—412]

A. As removing this and this?

Mr. BLAKESLEE.—Yes.

A. I would say this is a preferable key (indicating). It is a little sharper.

Q. Had you seen such a lever as Complainants' Exhibit 9 at the shop of the Wilson & Willard Manufacturing Company prior to the time you made the sketch of Complainants' Exhibit "E"?

Mr. LYON.—We object to that as irrelevant and immaterial. We are not trying the issue that that thing is patentable here.

The COURT.—I think we are getting on to collateral matters.

Mr. BLAKESLEE.—I am attempting to show, your Honor, that he didn't devise anything, that he had this before him.

The COURT.—Suppose he didn't devise anything; he had the key.

Mr. BLAKESLEE.—Yes, your Honor, this is the only thing that he devised.

The COURT.—Objection sustained.

Mr. BLAKESLEE.—Why did you select, as you say, W. H. Fahnestock and E. F. Grigsby to put

(Testimony of Robert E. Bole.)

their names on this sketch Complainants' Exhibit "E"?

A. I don't remember if I selected them. They were boys in the shop there. Probably they were in the office at the time.

Q. Had they ever witnessed anything else for you?

A. You mean in the way of sketches? Mr. Fahnestock witnessed this document in evidence.

Q. I mean in the way of sketches.

A. I can't recall any. I have some other sketches that were witnessed, lots of them, but I don't recall them.

Q. Did you give them, or either of them, to understand what this sketch concerned or showed at the time you say they witnessed it?

A. Yes, sir. [474—413]

Q. Please state what you said to them at that time and to each of them.

A. I told them I wanted them to witness that sketch which I said was a sketch of an under-reamer key remover. The exact words I can't recall now.

Q. Did you tell them in any words what was attempted to be shown here?

A. Yes, sir. I explained it to them that it was a single-piece key instead of a double-piece key remover.

Q. Didn't you explain to them that it was what it purports to be, a key remover?

A. I believe I did.

Q. What did either of them say to you?

A. I don't remember the conversation, Mr.

(Testimony of Robert E. Bole.)

Blakeslee. It has been some—well, it has been four years ago. I don't recall the conversation. I explained the mechanical reamer to them.

Q. Where was it that they signed this sketch?

A. Where?

Q. Yes. A. In what place?

Q. Yes.

A. In the office of the Wilson & Willard Manufacturing Company.

Q. Were they both there at the same time?

A. Yes, sir.

Q. Did each sign in the presence of the other?

A. Yes, sir.

Q. You are sure it was not at Mr. Grigsby's shipping desk, at the shipping desk, are you?

A. Yes, sir, I am quite positive it was in the office.

Q. Was the sheet or material upon which they signed just this size when they signed it? [475—

414] A. No, sir, it was a larger sheet.

Q. Oh. And what has become of the additional surface which does not appear here?

A. I think it was thrown right in the waste basket, right there.

Q. How was it removed?

A. With scissors from the stenographer's desk.

Q. Who did it? A. I did.

Q. After they signed it?

A. Right in their presence, yes, sir.

Q. After they signed it?

A. After they signed it.

Q. Then this sheet of linen is not in the same shape

(Testimony of Robert E. Bole.)

and condition that it was when they signed it?

A. Not at that identical moment.

Q. How big was it at the time they signed it?  
How much larger?

A. I couldn't say. It was a fairly good-sized sheet of paper. I had some of it in stock there in my desk, or Mr. Willard's desk, or this desk that Mr. Willard and I used together.

Q. How much of a margin was there?

A. He may be able to find the piece in the drawer back of the desk.

Q. How much of a margin was there around the field that this sketch occupied?

A. I don't recollect. I know to make a drawing like that I usually put thumb tacks in it. I see the thumb-tack marks are cut out, so it was probably much larger than that.

Q. Did you make this sketch there before Mr. Fahnestock and Mr. Grigsby?

A. I think that they were busy at something else when I was [476—415] drawing that sketch.

Q. Did you make it on the drafting board?

A. I think I did, because I am quite sure I used thumb tacks.

Q. You can't say how much larger the sheet was?

A. No, sir. I think it was just a sheet of scrap paper.

Q. Why didn't you select a large enough piece of tracing linen, if there was a roll of it there, so it would make some showing of this thing in detail, and on a scale that would better perpetuate the idea?



(Testimony of Robert E. Bole.)

A. Well, I had the drawing that I drew that from. It is a much smaller drawing. It is on a little pad.

Q. Then this is not the original of the drawing you made? A. No, sir; that is the tracing.

Q. What became of the original?

A. I suppose I destroyed it.

Q. Didn't Mr. Fahnestock and Mr. Grigsby sign the drawing, too? A. No, sir.

Q. Only signed this?

A. Only that tracing.

Q. Why did you trim it down to this size?

A. Oh, I can't just explain that. It was on a big sheet of paper, and I didn't see any necessity of carrying that paper around.

Q. You carried it around after that for a while in a bank pass-book, did you?

A. I carried it in a bank pass-book, in that book until I should judge about the middle of February, 1913.

Q. Two years or more later? A. Yes, sir.

Q. What did you do with it during the preceding two years, after its production?

A. I don't remember whether I put it with the rest of my [477—416] drawings immediately or carried it around in my pocket, but I am quite sure it was with the rest of my drawings up until the time I took it out of my trunk and placed it in the back of that bank pass-book.

Q. Can you produce that bank pass-book now?

A. Yes, sir. (Witness produces bank-book.)

Q. This sketch just about fits within the compass

(Testimony of Robert E. Bole.)

of the bank pass-book, does it not—that is, within its outline shape or area?     A. As to width, yes.

Q. It fits exactly as to width?

A. Yes, sir, within one-sixteenth of an inch, possibly a little more.

Q. And it fits easily within the bank pass-book as to height, does it not?

A. Easily, yes, sir, by an inch, probably.

Q. Now, as a matter of fact, didn't you trim this sketch down at the time you first put it in that bank pass-book so it would fit within a sixteenth of an inch within that book as to width?

A. I don't recall that. I don't believe I did.

Q. Why did you trim it exactly this size at the time you did trim that down?

A. At the time that Mr. Fahnestock and Mr. Grigsby witnessed it?

Q. Yes, when you say you cut it down.

A. I can't tell you that, Mr. Blakeslee. I just trimmed it. I trimmed it right there in front of them. I had no occasion to carry that extra paper around with me.

Q. And it happened you trimmed it down so it just fit in that bank pass-book?

A. I don't say that. It is possible it was trimmed to fit that bank pass-book; I wouldn't say that it was. I don't remember that. [478—417]

Q. You didn't look around for a book that would fit into your pocket and that also this would just fit into?     A. I don't know at all.

Q. As a matter of fact, you are not sure, are you,

(Testimony of Robert E. Bole.)

that you didn't trim it down until you put it in the pass-book? A. I am quite sure that I didn't.

Q. You will not say positively?

A. I will not say positively. I am quite sure I didn't.

Q. How about the preceding two years—where was this kept? Where was it in 1912?

A. I think all those years with possibly one or two exceptions it was in my trunk in my apartment.

Q. Did you show it to anybody during 1911 and 1912 after the date upon which you say you showed it to these witnesses?

A. After the date that they signed it?

Q. Yes. A. Yes, sir.

Q. To whom?

A. I showed it to a man by the name of Austin on Spring Street that is in the shoe business, I believe. I showed him a photograph of that sketch, and he remembered seeing it at that time. That was shortly after it was made, and I showed it to my father, I think it was in the spring of 1912.

Q. Is Mr. Austin available to-day?

A. I don't know. He has got a shoe store down on Spring street.

Q. Are you sure he is there now?

A. I am not sure, no sir.

Q. In what material is the purplish coloring upon this sketch? By what instrument or agency was it placed there? A. The drawing itself? [479—418]

Q. All the purplish portion or any part of the purplish portion.

(Testimony of Robert E. Bole.)

A. That is the drawing. That is a tracing. Of course, these words here (indicating) are not the tracing, or the words in here. The writing is not in the tracing, but the sketch itself.

Q. By what agency or thing was the purplish matter put on that surface?

A. By an indelible pencil.

Q. And you traced it on there over an original drawing with indelible pencil?

A. No, sir, the original drawing, if I remember right, was just a common pencil. I remember that is the kind we had out there at the shipping clerk's desk—not at the shipping clerk's desk; at the little desk that we had, and I think I made the sketch out there.

Q. But you made a tracing in indelible pencil?

A. Yes, sir.

Q. Why did you select an indelible pencil?

A. To preserve it, I think.

Q. Did you make that tracing in the shop of the Wilson & Willard Manufacturing Company?

A. Yes, sir.

Q. And you made the original drawing in that shop, did you? A. I believe I did.

Q. Where did you get the indelible pencil?

A. I don't know, Mr. Blakeslee; I don't know where I got it.

Q. What did Mr. Fahnstock and Mr. Grigsby sign that with? A. With ink.

Q. Why didn't they use the same pencil?

A. They were in the other room. When I got

(Testimony of Robert E. Bole.)

through making the tracing, I took it in the other room and had them witness it.

Q. You made this in Mr. Willard and Mr. Wilson's private office, [480—419] did you?

A. Where the drafting board is. At that time I was using the same office.

Q. Why was it that you put the part which professed to show the key and remover, up in one corner of the sketch, and occupied the main field of the surface with these two signatures?

A. I don't know how that comes. I think you will find that original drawing over there was probably on the back of a time-card. I think you will find—we had pads of those on our desk, and we often used them for sketching. I think you will find that the drawing was probably on the back of one of those time-cards, blank time-cards.

Q. That is the original drawing?

A. The original drawing, and this tracing was put over that, and it was drawn in there.

Q. What did you do with the original drawing?

A. I don't recall what was done with it. I hadn't any use for it.

Q. You didn't show this drawing to Mr. Willard, did you, or this sketch?

A. When do you mean, Mr. Blakeslee?

Q. At any time. A. At any time?

Q. At any time prior to last year.

A. I don't recall having done so. I may.

Q. You didn't show it to Mr. Wilson, did you, at any time prior to your production of it in the Inter-



(Testimony of Robert E. Bole.)

ference proceedings?

A. No, sir, I don't think I did.

Q. You are quite sure, are you, that Mr. Wilson never saw this until you offered it in evidence?

A. Quite sure.

Q. Did you ever make any drawing of the key for Mr. Wilson [481—420] prior to this time?

A. Yes, sir.

Q. When and where?

A. I made it in the shop on the floor, as I explained, when I was explaining it to him. I made a number of sketches at different times. Prior to the time that he finally agreed to try it out.

Q. And that was a sketch of just the key, was it?

A. I think so. I don't recall that. Speaking of the key or slot and keys in the reamer, we understood each other and we were familiar with all those working parts, and I probably just explained the key; but I always did contend that there should be lots of space above it.

Q. We have found that this does not fit within a sixteenth of an inch of the bank pass-book in which you testify you carried it for some months after the beginning of 1913. Was it because of the convenience of such fit that you cramped all this drawing matter and the signatures and dates upon such a small surface?

Mr. LYON.—Wait a moment. That is objected to as assuming a fact that the witness has not testified to. He has not testified that he put all those signatures on, or that he cramped them in there, or that they are cramped.

(Testimony of Robert E. Bole.)

The COURT.—Objection sustained.

Mr. BLAKESLEE.—Why did you make the drawing and provide for the showing of all the matter on this sketch, and arrange for the reception of the signatures purported to be upon this sketch, upon this small surface, which just in width fits within the bank pass-book you have produced?

Mr. LYON.—I object to that as purely argumentative. The witness has told us all about how he made it.

The COURT.—It is argumentative. [482—421]

Mr. BLAKESLEE.—What is the last question I have to ask as to size?

The COURT.—What was your question?

Mr. BLAKESLEE.—I wanted to know why he selected this particular size.

Mr. LYON.—He told you all about the circumstances.

The COURT.—Objection sustained.

Mr. BLAKESLEE.—Now, when you got back from Maricopa about the 21st of September, 1908, you say you had a talk with Mr. Willard about this order, the order which you had sent in. Please tell us in as nearly the words as you can recollect it, what was said by Mr. Willard and what was said by yourself in this connection at that time.

A. I am not positive as to the date I got back. What date did you say?

Q. I think you said about the 21st. You may make it any time.

A. Whatever date after I got back?

(Testimony of Robert E. Bole.)

Q. After you got back.

A. Mr. Willard said that Mr. Wilson would not make the key, that he had taken the matter up with Mr. Wilson at Bakersfield and Mr. Wilson would not make the key as I desired it. Do you want the full conversation?

Q. As fully as you can give it.

A. Mr. Wilson explained that he had had trouble with that style of a tee bar, a slotted tee, and that they broke just above the heavy part, the heaviest part, and that he would—at least he would call on or write the Monarch people and convince them that this would not be advisable to make this reamer in this style. He gave me to understand that Mr. Wilson would stand for no change whatsoever in the reamer.

Q. In giving you so to understand, what did he say, as nearly as you can recollect it? [483—422]

A. He said Mr. Wilson would stand for no changes whatsoever in the reamer.

Q. He said Mr. Wilson was at Bakersfield, did he?

A. Mr. Wilson was at Bakersfield; I believe it was Bakersfield. I have no way of knowing that he was in Bakersfield; I believe he was in Bakersfield. Yes, he said he would take the matter up with Mr. Wilson at Bakersfield.

Q. The Bole spear that was ordered from the same people up in Maricopa was shipped to them, was it?

A. Yes, sir.

Q. Did you at any time ever have any inquiry from Mr. Heber or Mr. Adams or the Sunset-Mon-

(Testimony of Robert E. Bole.)

arch Oil Company at Maricopa as to why had not been shipped to them the under-reamer with the single-piece key which was ordered of you in September, 1908?

A. I probably explained to them later when I saw them the reason for it. I can't recall the circumstances. I remember different times of telling Mr. Adams that I had hopes of having the reamer built eventually. I must have explained it to him.

Mr. BLAKESLEE.—We move to strike out the answer. It is all probability, and because it is not responsive, and we ask for a definite statement.

The COURT.—Objection overruled.

Mr. BLAKESLEE.—Can you remember any definite specific time at which you received any inquiry from any of those people as to why that order was not filled as given?

A. No, sir. If there was any such inquiry, it would probably come to Knapp, not to me.

Q. Did you ever know of any such word being received by the firm of Wilson & Willard Manufacturing Company? A. No, sir.

Q. You never heard that there was any such received? A. No, sir. [484—423]

Q. As a matter of fact, didn't you look through the files of the Wilson & Willard Manufacturing Company sometime after you returned from Maricopa in 1908 to see if you could find the order you had sent in, as you say, to that company, or Mr. Willard, for a reamer which was to be shipped to the Sunset-Monarch Oil Company?

(Testimony of Robert E. Bole.)

Mr. LYON.—Just a moment. I object to the question. It may be misleading. I would like to know what counsel means by “sometime after” his return. Did he mean during 1908, or sometime during subsequent years?

The COURT.—Well, he can answer it. Objection overruled.

Mr. BLAKESLEE.—You may answer at any time, Mr. Bole, if you wish.

A. I never looked through the files personally, no, sir. I don't remember whether I talked to Mr. Willard about it or whether Mr. Willard volunteered the information that he had looked through the files.

Q. To see if he could find this order?

A. To see if he could find this order.

Q. When was that?

A. I couldn't say. I think it was probably about the time that this argument, this letter of January 27th or January 17th, 1913—

Q. Sometime in 1913? A. I think so.

Q. As a matter of fact, didn't you go through the files of the Wilson & Willard Manufacturing Company and remove that letter with that order at one time? A. No, sir.

Q. What did Mr. Willard report as the result of his search?

A. He said he could not find it; he guessed he must have sent it up to Mr. Wilson at Bakersfield.

Q. Did he say he had made any search at his house for it? [485—424]

Mr. LYON.—Just a moment. We object unless



(Testimony of Robert E. Bole.)

the whole of the conversation is asked for.

The COURT.—You can bring it out on cross-examination.

Mr. LYON.—All right, if I am not limited.

The COURT.—Proceed.

A. I don't recall. He said that at that time he didn't keep—I think he said he sent all his stuff to Bakersfield.

Mr. BLAKESLEE.—Did you ever ask Mr. Wilson if he knew what had become of that order?

A. No, sir.

Q. As a matter of fact, have you ever requested Mr. Wilson or the Wilson & Willard Manufacturing Company, or anybody officially connected with that company, to look up the records of that company and attempt to find that order so that it might be introduced in this proceeding or in the interference proceedings which were previously conducted?

A. When Mr. Willard told me that he had been—I didn't make any effort after Mr. Willard informed me that it was not there.

Mr. BLAKESLEE.—I don't think that is responsive, your Honor. I want a definite answer yes or no.

The COURT.—What was the question?

(The question was read as above recorded.)

A. I believe that I did ask Mr. Willard.

Q. When?

A. I don't know when it was. I have forgotten the time.

Q. Did you ever ask anybody else?

(Testimony of Robert E. Bole.)

A. He said he didn't recall the exact shape of the key, or something like that. I said it was a one-piece key, and he remembered that, but he said he could not recall just the exact shape of it. And he says, "Well, look up the order and find out."

The COURT.—When was this? [486—425]

A. This was, I think, the first part of 1913 or latter part of 1912.

The COURT.—That was before this litigation arose. How did you happen to ask him about it?

A. Well, the reamer had been developed until such a time as it was quite a good tool, and it made this reamer a success, and I believed that I was entitled to a patent on it.

Mr. BLAKESLEE.—If you thought so, why didn't you apply for a patent then and there?

A. Mr. Blakeslee, I spoke to you about different things along that line. You were my attorney, and you would not take them up—anything that was connected with Wilson & Willard Manufacturing Company.

Q. I will admit that I have, prior to the last two years, filed several applications for patents for you, although I severed my relations with you before the interference controversy.

A. You know at that time that I was not overly financially strong.

Q. However, nothing was ever stated as to your claim to any such key. Now, I ask you—

Mr. LYON.—Now, if you want to testify in this case, we would like to have you sworn. Otherwise

(Testimony of Robert E. Bole.)

we will ask that the statement be stricken from the record.

The COURT.—It may be stricken out.

Mr. BLAKESLEE.—I am willing to be sworn if counsel wants to cross-examine me. Now, please answer the question why it was that you did not apply for a patent on this key prior to the commencement of this controversy.

A. Well, that was the reason.

Q. Prior to 1913?

A. I had, I think it was, four or five patents pending in [487—426] your office at that time. I remember one patent, one application, that Mr. Knapp brought in after I had brought mine in to you and you would not accept Mr. Knapp's, and made it clear to me that you would not do anything that would interfere with one member of the firm in connection with the other. I had no other attorney at the time, and I had an interest in the pump business. I had my pump business to take care of. Money was tight, and I think there was four or five stores—four stores, probably—buying stuff by the carload, and I was pretty busy.

Mr. BLAKESLEE.—You never did submit any reamer matter to me to patent, did you?

A. I don't believe I did.

Q. Now, you—

A. I don't believe I submitted anything to you that would interfere with anything that was in connection with Wilson & Willard Manufacturing Company's shop at that time.

(Testimony of Robert E. Bole.)

Q. But you did file other patent applications, did you, subsequent to the beginning—subsequent to the time that you asked Mr. Willard to look up the order? A. Afterwards?

Q. Yes.

A. I don't believe I did, no, sir. I don't remember the dates of filing these applications.

Q. But you did subsequent to the time that you made this sketch? A. Yes, sir.

Q. Now, you have testified that you sent in—that you considered the order which had been sent in from Maricopa for the Sunset-Monarch Oil Company for a reamer to include the single-piece key, to be your record, as to your having worked out such a thing at that time. When did you first attempt to determine whether such record was perpetuated or on file at the place [488—427] of business of the Wilson & Willard Manufacturing Company?

A. I don't recall that. The first time was when I talked to Mr. Willard about it.

Q. That would be some five years after the—some four years and a half after the time you sent in the order? A. About that, I should judge.

Q. And since the beginning of the interference controversy, you have made no effort, have you, to determine whether there was on file among the records of the Wilson & Willard Manufacturing Company such order showing such key device?

A. I considered it useless.

Mr. LYON.—I will ask counsel for Wilson if he will not concede, in order to save the time of the

(Testimony of Robert E. Bole.)

Court, that such demand was made in the interference proceeding, and both E. C. Wilson and W. W. Wilson cross-examined as to their inability to produce such order.

Mr. BLAKESLEE.—We will concede that a demand was made formally by counsel, and that we, in compliance, attempted to find any such thing, and the testimony shows it could not be found. That was after, of course, the taking of testimony commenced.

The COURT.—You say after the taking of testimony commenced?

Mr. BLAKESLEE.—After it had commenced, yes, sir—not before.

Mr. LYON.—The burden of proof is on the other side during the taking of their testimony.

Mr. BLAKESLEE.—Did you make, and if so, did you keep, any copy of the letter which you say you sent in to Mr. Willard or the Wilson & Willard Manufacturing Company embodying this order for the single-piece key for the Sunset-Monarch Oil Company in 1908?

A. No, sir, I didn't make any copy of it.

Q. Then you relied, did you, entirely upon Wilson & Willard [489—428] Manufacturing Company, which was making under-reamers patented by Mr. Wilson, to keep your records with respect to what you contended was an invention in under-reamers—is that correct? A. Yes, sir.

Q. Did you make or keep any copy at all of any of those sketches you sent in for that order?

A. No, sir, I don't believe that I did.



(Testimony of Robert E. Bole.)

Q. Why was it you held up the manufacture of the spear until you got back, and ordered Mr. Willard, as you say, to go right ahead with the manufacture of the reamer for the Sunset-Monarch people?

A. I don't believe that I did hold up the order for the spear. The order was put on the book, I think, September 19. It was put on September 19th, and the two of them were shipped on the 30th. So it could not have been held off. That would make the spear complete, a brand new ten-inch spear and a new 9  $\frac{5}{8}$  reamer, in five days, so that could not have been held off at all.

Q. The order for the spear was made up the date that you returned to Los Angeles, wasn't it?

Mr. LYON.—Now, wait a moment. I object to that on the ground that there is no foundation laid, the witness *not shown* that he knows personally about the making up of the order. That is, you mean the shop order, I suppose?

Mr. BLAKESLEE.—Question withdrawn.

Q. As a matter of fact, was anything done on the spear until after you returned?

A. I don't recall that.

Q. Anything about it?

A. I don't recall it.

Q. But in spite of the new features of the reamer, your instructions to Mr. Willard were to go right ahead with that, was that it? [490—429]

A. To go ahead and finish up the body as per the instructions and get it ready to ship immediately if not finished.

(Testimony of Robert E. Bole.)

The COURT.—We will take a recess until two o'clock.

(Recess taken until 2 o'clock P. M.) [491—430]

Friday, March 26, 1915, 2 o'clock P. M.

ROBERT E. BOLE, recalled.

Cross-examination resumed.

(By Mr. BLAKESLEE.)

Q. In the interference proceedings to which we referred before, you testified as follows, did you not: "Q. 36. Have you such letter? A. No, sir. Q. 37. Please state what said letter contained with reference to this order for this 9 5/8 inch under-reamer for said Sunset-Monarch Oil Company. A. I ordered this reamer to be made up and shipped immediately and a description of the reamer was right on the letter. I described it as I went along and made sketches as I desired it. The spear I notified them that as soon as I returned to Los Angeles I would have forgings made to have it made up at once, but to ship the reamer immediately—to make up and ship the reamer immediately." You so testified? A. Yes, sir.

Q. That testimony was to the best of your knowledge at that time? A. Yes, sir.

Q. Then is it true that you wished the reamer pushed ahead and the spear held up till you got back to Los Angeles? A. Yes, sir.

Q. And there was nothing special about this spear, was there?

A. It was all special. They never made any like it before.

(Testimony of Robert E. Bole.)

Q. Hadn't there been such spears made before?

A. Not in that shop, no, sir.

Q. Hadn't they been made before?      A. Yes, sir.

[492—431]

Q. A great many years before?

A. No, sir; not a great many years before; they had been made in 1906 and seven.

Q. At your father's shop?      A. No, sir.

Q. Where were they made?

A. At the Bunting Iron Works, Coalinga, and the California Oil Fields Limited shops at Coalinga.

Q. That type of spear was known in the fields in California, wasn't it?

A. Only as the "Bole spear"; yes, sir. It was not extensively known, because we never built a great many.

Q. It was known like the Austrian under-reamers and various other spears—Mack spears and other things, wasn't it?

Mr. LYON.—Objected to as irrelevant and immaterial.

The COURT.—I will sustain the objection.

Q. (By Mr. BLAKESLEE.) That spear was known in the California fields, was it not?

Mr. LYON.—We object to that as immaterial. We are not trying a patent case on the spears.

The COURT.—I will sustain the objection.

Q. (By Mr. BLAKESLEE.) When you were testifying in that interference you did not tell us anything about there being an original drawing of which this sketch is a tracing, did you?

(Testimony of Robert E. Bole.)

Mr. LYON.—We object to that as not the proper method of impeachment by testimony. Let him show the witness his testimony.

The COURT.—I can't hear you.

Mr. LYON.—We object to that as not proper cross-examination. The witness should be confronted with his testimony in the interference, and he should be shown his testimony.

Mr. BLAKESLEE.—I am asking a question of fact, whether he did testify about that at all.

The COURT.—I don't know how the rule would be about that. [493—432] Of course, a man is entitled to be confronted with his testimony—

Mr. BLAKESLEE.—There is no objection to that.

Mr. LYON.—Do you want to prove that he did not?

Mr. BLAKESLEE.—Yes.

Mr. LYON.—Then offer the whole of his deposition.

The COURT.—Are you going to offer the whole deposition?

Mr. BLAKESLEE.—Yes, sir.

The COURT.—That will settle it, of itself, then.

Q. (By Mr. BLAKESLEE.) I want to ask him why he didn't.

A. You don't want me to read all this?

Q. Do you know whether you so testified as to that original drawing?

A. Do you mean the drawing that accompanied the original drawing for the key?

Q. The drawing of which the sketch of January

(Testimony of Robert E. Bole.)

27, 1911, is supposed to be a tracing.

A. That little sketch?

Q. Yes.

A. No; I don't believe I made mention of that.

Q. Why didn't you tell us about it in that case?

A. I don't believe I was asked.

Q. You testified that you were hardly in financial condition to apply for letters patent in 1911 and twelve. Were you better off in 1913 and fourteen?

Mr. LYON.—Objected to as immaterial. It is conceded that he did not pay for the cost of making this application for the patent in suit.

Mr. BLAKESLEE.—Who did?

Mr. LYON.—That is part of the consideration for the assignment of a half interest to Mr. Double.

The COURT.—Then the objection will be sustained, with that concession. [494—433]

Q. (By Mr. BLAKESLEE.) You have not told us yet when you first worked out this single-piece key device. When was that?

A. It was during the week that I was away from the shops of the Wilson & Willard Manufacturing Company in September, 1908, and it was while I was at Maricopa, after I had tried to secure the order from Mr. Heber. I couldn't tell you the exact date.

Q. Did that conception come to you at the time you were talking to Mr. Heber or before?

A. I think that it came to me right at that time, if I recollect right. I saw an opportunity to overcome the difficulty. Whether I took it up with Mr. Heber at that identical moment or not, I don't know.



(Testimony of Robert E. Bole.)

Those things usually take a little time to work them out.

Q. And then you immediately made those sketches, did you? A. I couldn't say as to that.

Q. Did you make any request to Mr. Heber or Mr. Adams to witness any sketch for you at that time or to make any notation that you had disclosed this invention to them? A. No, sir.

Q. At that time you were quite sure that you told Mr. Heber that the practical way to extract this key was to lift it up by a sharp-pointed instrument or drift applied beneath one end of the key, and then to apply force to the other end of the key. Is that correct?

A. Yes, sir. I believe I used the word "drift."

Q. (By the COURT.) To whom did you tell that?

A. Mr. Heber, superintendent of the Sunset-Monarch Oil Company.

Q. When did you tell him that?

A. In September, 1908, when he gave me the order for the reamer of this size.

Q. (By Mr. BLAKESLEE.) And the action of the lever which you say you got up was to be a lifting action and a prying action, was it, for removing the key? [495—434]

A. You mean that the lever that I have on the sketch that is witnessed?

Q. Yes.

A. Yes; if it was to be used at all it was to be used to pry it up and outwardly at the same time.

Q. You never tried that, did you?

(Testimony of Robert E. Bole.)

A. No, sir, I never tried it; not till to-day.

Mr. BLAKESLEE.—In connection with the testimony of this witness we offer in evidence the key which he inserted in “Defendants’ Exhibit 1,” and the lever with which he attempted to extract the key, as “Defendants’ Exhibits 11 and 12.”

Mr. LYON.—Objected to as incompetent, no foundation laid, if it is attempted by that to prove anything other than the particular device, or prove any connection of it with any device of Mr. Bole’s. There is no identification and no foundation laid.

Mr. BLAKESLEE.—We offer it for whatever it is worth in connection with the testimony and the sketch.

The COURT.—The Supreme Court of California criticised very severely, a Judge admitting testimony for what it is worth. It ought to be material or not material, one or the other.

Mr. BLAKESLEE.—We contend it is material. I can state what I think it is worth. In other words, we want to show and we shall show, we contend, before we are through with this case, that that is all this complainant did in and about this invention.

The COURT.—I think it is material for the purpose of illustrating the witness’ testimony.

Mr. BLAKESLEE.—That is what I mean.

Mr. LYON.—There is no foundation laid, of course, that it was built according to his idea.

Q. (By Mr. BLAKESLEE.) In 1908 you considered the method of applying the drift beneath the key to raise one end of it and then drive the key

(Testimony of Robert E. Bole.)

from the other end to remove it, as being the simple, practical way, did you? [496—435]

A. Yes, sir.

Q. How many sketches did you make for Mr. Heber in 1908?

A. I made one that I remember of.

Q. How many for Mr. Adams?

A. I believe I just made the one.

Q. Can you describe in your own words the key that you say you drew in chalk for Mr. Wilson when you were discussing that matter with him?

A. The key that I drew for Mr. Wilson on the floor was a duplicate of this key here.

Q. Can you describe it to me, in your own words?

A. What I described to Mr. Wilson at that time?

Q. What you drew in chalk on the floor.

A. I just drew a sketch of this key.

Q. That is the best you can tell us as to what you drew?

A. No. I told him how to put it in and take it out, and he said that he didn't believe you could get it out.

Q. That is the best you can tell me in words as to what you drew on the floor?

A. He said the construction of the tee bar was weak. We went all over it—we discussed it back and forth. He told me what the weak faults of the reamer would be, and I told him what the strong points would be. He pointed out the weak points, that is, the breaking of the tee bar and the inability to get the key out of the reamer. I pointed out the

(Testimony of Robert E. Bole.)

strong points of the reamer in telling him that you could deepen the key and make it stronger.

Mr. BLAKESLEE.—We ask that the answer be stricken out as not responsive.

The COURT.—Strike it out. I think the question is foolish.

Mr. BLAKESLEE.—Then I will withdraw the question.

Q. Will you please state in your own words what it was that you drew with chalk on the floor for Mr. Wilson, to illustrate the key? [497—436]

The COURT.—I will have him draw a diagram of it and let me see the diagram. To describe a thing by words is a difficult thing for anybody to do.

A. (Witness draws diagram.) A chalk drawing would not be nearly as plain as that.

Mr. BLAKESLEE.—The witness has seen these keys a great many times, and I wanted to see—

The COURT.—Your question simply asked him if he had the ability mentally to describe that thing. I don't think there is anything in that sort of an interrogation. You can get at it by letting him put his idea on paper. It might be difficult for anybody to describe.

Mr. BLAKESLEE.—He is a machinist, your Honor.

The WITNESS.—Practical.

Mr. LYON.—We would like to offer in evidence the sketch that was made.

The COURT.—You can do that when it comes to your side.

(Testimony of Robert E. Bole.)

Mr. LYON.—I ask that the sketch be identified.

Q. (By Mr. BLAKESLEE.) At the time you testified Mr. Wilson said he didn't know how to get the key out, what did you tell him could be done, if anything?

Mr. LYON.—I ask if the counsel means at the time of that conversation, or at the time he testified?

Mr. BLAKESLEE.—As he testified. I am not fixing the time.

The COURT.—Overruled.

A. I didn't say Mr. Wilson said he didn't know how to get the key out. He said he didn't believe the key could be gotten out.

Q. (By Mr. BLAKESLEE.) Then what did you say to him at that time?

A. I said you could get it out by simply driving a shift under it and raising one end and driving it out from the other side.

Q. Was that prior to the time that you made this sketch of this lever, which sketch you say was witnessed by Fahnestock and [498—437] Grigsby?

A. We had a number of discussions, Mr. Wilson and I, on that thing; and Mr. Wilson insisted that the only way the thing could be gotten out was to put a lever of some sort under and pry it out. And I told him that I could devise a lever like that. In order to get to make this tool, I had to agree with him some way. He wouldn't make it unless I did agree with him. And this was the tool that I got up and had witnessed,—the one that I drew up and had witnessed.



(Testimony of Robert E. Bole.)

Q. Then it was the lever that Mr. Wilson suggested, was it, that you drew up and witnessed?

A. No, sir; Mr. Wilson said some kind of a lever would have to be devised. He said that was the only way he could see to get it out.

Q. Then was this conversation prior to the making of that sketch? You have not answered as to that.

A. Yes, sir; it was prior to the time of making this sketch; yes, sir.

Q. And it was Mr. Wilson who suggested that some kind of a lever would have to be devised?

A. He believed that the only way—I don't know whether suggested that or not. He believed that the only way was to pry it up—pry it up and pull it out.

Q. That is what the lever was intended to do, wasn't it?

A. Yes, sir; that was what that was intended to do. I told him I could devise a lever that could do it.

Q. You have said that Mr. Wilson said there would be an objection to the use of such a key, in that mud or detritus would get in above the key and jam it so that it could not be pried out. Isn't the same thing possible with a key as used in the Wilson reamer? A. The same thing possible now?

Q. Yes. [499—438]

A. I don't say that, in the first place, Mr. Blakeslee, I said that the mud would get in and interfere with the working parts of the reamer.

Q. Isn't there the same possibility of mud so get-

(Testimony of Robert E. Bole.)

ting in in the reamer as made with the key at the present time like this exhibit 1?

A. There is now. There is now; yes, sir.

Q. (By the COURT.) When did you tell him that statement, that the mud would get in? When was that conversation?

A. Mr. Wilson contended that the mud would get in.

Q. When was that?

A. The first time I talked to Mr. Wilson, when he first came down from Bakersfield. The first time I talked this over with him at all.

Q. Was that away back in 1908?

A. Yes, sir; the latter part of 1908 or the spring of 1909. The first opportunity I had to talk to him. I don't recall exactly the date.

Q. (By Mr. BLAKESLEE.) Please tell us how many of these talks you had with Mr. E. C. Wilson prior to January 26, 1911, and approximately, when you had each of said talks.

A. Mr. Wilson testified we talked this thing over hundreds of times, but I won't say that.

Q. The question relates to the period prior to January 26, 1911.

A. We talked it over a great many times. I can't tell you, Mr. Blakeslee, how many times.

Q. Can you fix the approximate times of such talks? A. No, sir; I could not.

Q. Can you state whether you talked it over three times or fifty?

A. It was not fifty and it was more than three.

(Testimony of Robert E. Bole.)

Q. Were any persons present at such conversations besides you and Mr. Wilson?

A. I don't remember. Mr. Willard may have been at one or two of them.

Q. You are not sure whether Mr. Harry Naphas was there or not, are you?

A. When was this? Prior to what time?

Q. Prior to January 26, 1911.

A. No, sir; Mr. Naphas was not there at that time.

Q. Can you fix any conversation during that period of time at which anybody was present but you and Mr. Wilson?

A. No, sir; I can't fix any conversation—the time of any conversation.

Q. Is it your best knowledge that nobody else was present at these conversations or any of them?

A. I think Mr. Willard was at a couple of them.

Q. How many times? A. I couldn't say.

Q. Are you sure he was present at any such times?

A. I kind of think he was. I kind of think the conversation that Mr. Wilcox referred to was the one when Mr. Willard was there. But the conversation occurred before January 27, 1911.

Q. Were you present at that conversation?

A. If there was a conversation of that sort, I certainly was present. I don't say there was a conversation, but it seems to me that I had conversations before January 27, 1911, with Mr. Wilson, at which Mr. Willard was present. I won't say positively.

Q. You heard Mr. Wilson's testimony in this case, did you not? A. Yes, sir.

(Testimony of Robert E. Bole.)

Q. Are you now referring to the conversation which he referred to which is supposed to have taken place in the rear of the shop?

A. No, sir; there was no such conversation in the rear of that shop. [501—440]

Q. Aside from the fact of whether there was a conference called, or whether a number of people put their heads together, do you not remember such a conversation in which you suggested to Mr. Wilson that the key could be pried out?

A. Not after January. Not after that drawing was made. If there was such a conversation it was before that drawing was made; before January 27. If there was such a conversation.

Q. And if there was such a conversation before the drawing was made, did Mr. Wilson also at such conversation show you a sketch of the key?

A. He did not show me any sketch of a key. He never showed me any sketch of a key. He may have had a sketch in his hand that I saw.

Q. Did he have a sketch in his hand at that time?

A. I don't recall.

Q. Will you say that he did not have at such time?

A. No; I won't.

Q. (By the COURT.) Do you remember being with Mr. Wilson at the time when Mr. Wilcox was near you?

A. No; I don't remember that, your Honor. I hate to doubt Mr. Wilcox's word, that is all. I don't remember any such conversation.

Q. You don't remember of saying to Mr. Wilson

(Testimony of Robert E. Bole.)

when Mr. Wilcox could hear you, "pry it out," or words to that effect?     A. No, sir.

Q. You don't remember that at all?     A. No.

Q. (By Mr. BLAKESLEE.) You have referred to some kind of a reamer of the two-plug type. What was that?

A. The block and screw type. Do you want a description of that?

Q. Well, it is what we have called in these proceedings the block and screw type? [502—441]

A. Yes, sir; the block and screw type reamer.

Q. Only at times plugs and pins were used in place of screws?

A. It is the same thing, but they call them plugs.

Q. Now, you say this making up of the key was done through the pump department. By that you mean the Bole Pump Company's business, do you?

A. I think the order went through the pump department, but I am not positive about that. In other words, I would make up the order and it would go to the office to be typewritten and come out through the shop in the regular way. Then it would go to the blacksmith's shop for the forging, from there to the shaper, or whoever worked on it.

Q. Did you make up that order?

A. I say that I think I did.

Q. Have you looked to see if you can find that order?

A. I have no records of any kind from the Wilson & Willard Manufacturing Company. They were all left there.



(Testimony of Robert E. Bole.)

Q. Didn't you keep any records of the matters that went through your own pump business there?

A. They were put on a file right on the desk that was used by the men of the pump department, and they would get used up for scrap paper. They were not kept. That is, the duplicates were not kept.

Q. Please mention each and every person who had anything to do with making up this key which you say you ordered through the pump department for insertion in the Wilson reamer.

A. Well, the small hammer would make the key—the steam hammer crew.

Q. Who were in that crew?

A. Fred Rydgren and Charlie Berg. From there it was taken in to the shaper and the shaper work done on it.

Q. Who did that work?

A. I think a man by the name of Wills did that.

[503—442]

Q. Who did the next work on it?

A. I helped file and fit it.

Q. Where did you file and fit it? A. At the vise.

Q. In what part of the shop?

A. In the west end of the shop where the vises are on the benches.

Q. Then who first put it in the reamer?

A. I was the first man that put it in the reamer. Mr. Houriet attempted to put it in the reamer.

Q. That was reamer 120? A. I don't know.

Q. And what was done with that reamer with the key in it?

(Testimony of Robert E. Bole.)

A. It stood around there for exhibition purposes.

Q. For how long?

A. I couldn't say that.

Q. Do you remember any other reamer with a single-piece key that was made before that?

A. I don't know which was the first one made.

Q. Please answer the question.

A. Before the first one—the one that I refer to?

Q. The one you are discussing.

A. I am talking about the first one. There was none made before the first one; no, sir.

Q. I presume that the first was the first, but was that the first you know of.

A. The one I am speaking of was the first.

Q. To your knowledge.

A. Yes, sir; it was the first.

Q. And you yourself drove that first key into place in the reamer?

A. Yes, sir. The reason I am positive about the first reamer [504—443] is, it is my opinion that the work started on that reamer before the 3d of February, and that don't seem to me to be the first reamer,—this reamer 120.

Q. How long before?

A. I should say about the middle of January.

Q. Away before you made your sketch of January 26, 1911?

A. Not the middle of January. What is the date of that No. 6904?

Q. February 3, 1911.

A. Well, it runs in my head that it took about a

(Testimony of Robert E. Bole.)

month to make it, and I think it was finished about the 15th of February.

Q. Then that would mean a commencement on it about the 15th of January, would it?

A. Well, I couldn't say positively.

Q. Well, such reckoning would bring it there. Now, that was twelve days before you made the sketch of a January 27, 1911. Is that correct?

A. I should judge I am wrong in that. I said it ran in my head that it took about that time.

Q. But you can't state from your own knowledge that you have—

A. No, I have no records at all of it.

Q. Then you have no foundation for the statement that February 3, 1911, was too early a date for the commencement of the first reamer with the single-piece key. Is that correct? A. That is correct.

Q. Who were present when you drove the key in?

A. Mr. Naphas and Mr. — No, I don't know that Mr. Naphas was present. Mr. Houriet was present.

Q. That Mr. Houriet is the same party who has testified?

A. Yes. And Mr. Wilcox was around there; there may have been others.

Q. Was Wilcox there and saw you do it?

A. I don't know whether he just saw me drive that key in or not. [505—444] He was there. Mr. Houriet, I am positive, saw me drive it in, because I took the key away from Mr. Houriet and tried to drive it in myself.

Q. And Mr. Wilson saw you do that?

(Testimony of Robert E. Bole.)

A. No, sir.

Q. Have you mentioned each and every person who had anything to do with the making up of the first key which you say you supervised, and also every person who saw it up to the time of its first introduction within the reamer?

A. Mr. Houriet worked on it, I am pretty sure.

Q. No other names to mention?

A. Myself and Mr. Berg and Mr. Rydgren, I think were about all; but I am not sure about that.

Q. Now, yesterday you testified that E. C. Wilson, Charles E. Wilcox and Al W. Houriet were all present when you drove in this first key. Is that your present testimony?

Mr. LYON.—I object to that; show him the transcript.

The COURT.—Show him the transcript of the evidence, if it is written out.

Mr. BLAKESLEE.—He testified this morning. It was not yesterday.

A. I don't think that I testified that Mr. Wilson was there when the key was driven in.

Q. And if you did, you wish to correct it, do you?

A. I didn't do it. I am positive. But if I did, I wish to correct it now.

Q. Then this lighter key or weaker key which was made for this first single-piece key reamer, was put aside after it was first put in and taken out, and a heavier key substituted. Is that correct?

A. I don't know. At the time it was conceded that this key was too weak, and I presume that the

(Testimony of Robert E. Bole.)

heavier key was put in before it went out. I am quite sure they wouldn't send that key out [506—445]

Q. Do you know anything about the history of that subsequent key after you drove it in?

A. No, sir, only that it was used there for demonstrating purposes for quite a long time.

Q. When and where was it that you made this explanation to Mr. Hubbard, your brother-in-law, that you intended to do certain things for holding the lower end of the spring in the Wilson under-reamer?

A. Well, it was in Los Angeles here.

Q. When?

A. Well, it was about the fore part of October, 1908. It may have been on the train, I think, coming in. I met him out here a ways at some little station. If I remember correctly, I think I went out and got on the train with him, and I believe I mentioned the thing among one of the very first things I said to him.

Q. Will you state the number of sketches that were embodied in that letter order which you sent in from Mariposa in September, 1908, as you say, for the Wilson reamer.

A. My recollection is that there were two sketches.

Q. Now, please tell us just what you said to Mr. Fahnestock and Mr. Grigsby—

A. That is, two sketches on the letter.

Q. —as you say, on January 27, 1911, in showing them this sketch of that date.

A. The exact words?



(Testimony of Robert E. Bole.)

Q. As closely as you can.

A. I will have to go into a description of the reamer again, because I described it to them in my own words as near as I could.

Q. State what you told them in substance, if you cannot in words, please.

A. Well, I said this one-piece key is to be driven in through the side of the reamer body through the slot. The driving of it in [507—446] will raise the spring and as soon as the key snaps in place it will be held in its position by the tension of the spring above; and that the cutters are to be supported by means of a spring-actuated rod.

Q. Now, this morning you said that you thought Mr. Naphas was present.

Mr. LYON.—Is that all the conversation? Do you want the rest of the conversation? You interrupted the witness.

Mr. BLAKESLEE.—I thought he was through.

A. That is practically the conversation. I asked them to witness the sketch.

Q. When did you show this sketch to Austin, the shoe man?

A. About the 1st of February, 1911.

Q. Did you ask him at that time to witness it or make any memorandum of it? A. No, sir.

Q. You stated this morning that Mr. Naphas was possibly present when you put in the first key. Is that your present recollection?

A. Mr. Naphas was present—Not when I put in the key, no, sir; when I took the key out. The key

(Testimony of Robert E. Bole.)

was already in when he saw it.

Q. He is in the city, is he? A. Yes, sir.

Q. Do you know where he is?

A. In the courtroom.

Q. Last fall on the 7th of October you called at the house of Mr. W. H. Fahnestock in the evening, did you not?

Mr. LYON.—We object to that as immaterial.

The COURT.—Objection overruled. I presume it is leading up to a conversation.

Mr. BLAKESLEE.—Yes, sir.

A. I don't recall the date. I called, I think it was in October—last fall.. [508—447]

Q. You only called there once last year, didn't you? A. Yes, sir.

Q. And not since then? A. No, sir; not since.

Q. Did you have a conversation with Mr. Fahnestock at that time? A. Yes, sir.

Q. Now, at the time of this visit at Mr. Fahnestock's residence on October 7, 1913, in the evening, namely, at 6647 Selma Avenue, City of Los Angeles, California, didn't you say to Mr. Fahnestock: "I don't remember of your explaining anything about it" in answer to his question: "When I signed the sketch you didn't explain anything about it, did you?" Did you make such a statement under those circumstances?

Mr. LYON.—The question is objectionable as being involved. I can't understand who is supposed to be saying anything.

The COURT.—It does seem to me that the state-

(Testimony of Robert E. Bole.)

ment is involved. You seem to have a parenthetical phrase which is ambiguous and uncertain. Can't you ask it differently?

Mr. BLAKESLEE.—Perhaps I should state the time and place.

The COURT.—You need not state the time and place. He is a party to the litigation.

Q. (By Mr. BLAKESLEE.) At the time of this visit to Mr. Fahnestock last October, did Mr. Fahnestock not ask you whether when he signed the sketch you did not explain anything about it, and did you not in response to that question say that you did not remember explaining anything about it, and that you just asked Fahnestock to witness it?

A. No, sir; I did not. I can tell you what I did say.

The COURT.—You are inquiring as to this exhibit that has Fahnestock's name on it?

Mr. BLAKESLEE.—Yes, sir. We are laying a foundation to impeach the witness. [509—448]

Q. Now, you took pains to make the sketch—that of January 27, 1911,—you say, to show how a lever could be applied under one end of the single-piece key and how the key could be pried up. Did you ever make any sketch prior to that time to illustrate the method by which you proposed to drive a drift or a pointed instrument under one end of the key and lift it up?

A. Not unless in illustrating it to Mr. Adams or Mr. Hubbard. I may have done that. The key was the principal thing, and that is the principal thing that I remember.

(Testimony of Robert E. Bole.)

Q. Now, did you make any such sketch at that time? A. Of a drift?

Q. Yes; showing how a drift could be applied.

A. I can't say that I did and I can't say that I didn't.

Q. Did you give any instructions to Mr. Willard in the order which you say you sent him to make up anything in the nature of such drift to be driven under the key and to be shipped with that reamer?

A. No, sir. That sketch that I reproduced here is as near as I can remember what I sent to Mr. Willard in that letter.

Q. Did you suggest any method or means of getting the key out?

A. I told him it could be very easily gotten out by driving a drift under one end.

The COURT.—I don't hear you.

A. I told him that it could be very easily removed by driving a drift under one end of the key, raising that end up, and driving it out on the other side.

Q. When was it that you told him that?

A. That was in my letter to the Wilson & Willard Manufacturing Company, care of Mr. Willard, on the 9th of September, 1908.

Q. (By Mr. BLAKESLEE.) But you made no sketch to show the application of this drift? [510—449]

A. I don't remember it in that letter.

Q. And yet that you considered a much better way, did you not, to get the key out than by using the lever in the sketch of January 27, 1911?

(Testimony of Robert E. Bole.)

A. Yes, sir.

Mr. BLAKESLEE.—We wish to offer in evidence and have copied into the record the deposition given by the witness in this Interference No. 37126 in the opening case of Bole, and we ask that such deposition be copied into the record from the typewritten transcript furnished by the reporter in that case, and particularly for the purpose of impeachment. And, of course, this is subject to correction by comparison with the notes of the reporter if such corrections are found to be necessary.

Mr. LYON.—We have no objection except this: We insist that only the questions and answers be copied in and not the argument of counsel appearing in said deposition.

Mr. BLAKESLEE.—That is stipulated.

The COURT.—How do you expect the Court to consider this?

Mr. LYON.—We will have to read it in the argument. That is all.

The COURT.—Such parts as you desire the Court to consider?

Mr. LYON.—Yes, sir.

Mr. BLAKESLEE.—That concludes the cross-examination.

(The deposition last referred to, given by the witness in Interference No. 37126 in the opening case of Bole, and offered in evidence, is as follows.) [511—450]



**[Deposition of Robert E. Bole, for Plaintiffs.]**

ROBERT E. BOLE, called as a witness on behalf of the party Bole, being first duly sworn according to law, testifies as follows:

Direct Examination.

(By Mr. LYON.)

Q. 1. You are the Robert E. Bole to whom letters patent of the United States No. 1,080,135 were on December 2, 1913, granted and issued, on an application filed in the United States Patent Office February 19, 1913, serial number 749,343, are you?

A. Yes.

Q. 2. When did you conceive the invention illustrated, described and claimed in said patent?

A. In the month of September, 1908, somewhere between the 12th day of the month and the 20th.

Q. 3. Where were you at the time?

A. At Maricopa.

Q. 4. Maricopa, California?

A. Kern County, California.

Q. 5. What were you doing at that time?

A. I was employed by the Sunset-Monarch Oil Company to take charge of their shop, and I went there for that purpose.

Q. 6. Who employed you for that purpose at that time?

A. Mr. R. L. Heber, who, I believe, was the general foreman.

Q. 7. Prior to going to the Sunset-Monarch shop at that time, with what business had you been connected?

(Deposition of Robert E. Bole.)

A. I was connected as a copartner of Mr. Willard in the Bole Pump Company, and we ran that in connection with the Wilson & Willard Manufacturing Company of Los Angeles.

Q. 8. Please state the circumstances under which you conceived the said invention.

A. As I said before, I went to Maricopa to take charge of [512—451] this shop, and Mr. Willard of the Wilson & Willard Manufacturing Company asked me to see if I could make any sales of tools or supplies that they had in stock, or would make, while I was there. I had not expected to stay at the Monarch shop except to get the shop in running order; and as soon as I completed that job I figured on coming back to Los Angeles. When I went there the general manager had sent a man down from San Francisco for the same job, and so Mr. Heber, the superintendent, agreed to pay my expenses and give me an order for some tools and call it square, and I would go back to Los Angeles. So he gave me an order for a 10-inch Bole spear, and I asked him if I he didn't want any under-reamers. He said he needed an under-reamer at that time—a  $9\frac{5}{8}$  inch reamer—but that he had had trouble with the Wilson under-reamer and didn't want to order any more. I asked what the trouble was and he said they had trouble with the pins; that the pins would freeze and they would have to drill them out. He said he didn't want to use the reamer at all under the circumstances. I said I thought we could overcome that, and that I could devise a reamer which would over-

(Deposition of Robert E. Bole.)

come that trouble, and I did devise and show him at that time this reamer on which I took out a patent—the key reamer.

Q. 9. You say that they, the Sunset-Monarch, had had some trouble with the pins freezing. What pins?

A. At that time the Wilson & Willard Manufacturing Company were making an under-reamer which they called their block and screw type. That was one of these reamers. The pins were screwed in the sides of the reamer into a block and this block held the spring in position when the cutters were suspended on the tee bar, and the upper end of the tee bar suspended on the spring. It was this style of reamer that gave them the trouble.

Q. 10. How did you explain to Mr. Heber this single-piece key that you referred to? [513—452]

A. I made a sketch of a reamer with a key and the tee bar and cutters in place.

Q. 11. And what kind of a key did you sketch for Mr. Heber at that time?

A. It was a 1-piece key loosely mounted in the reamer body, and that was my object, to have it very loosely mounted so it could not possibly freeze. It was loosely mounted in the body, and was held in place from the side motion by the tension of the spring above. At its lower end it had a projection which fitted into the bore of the reamer below.

Q. 12. Explain a little more fully the form and shape of such projection which fitted into the bore below, as it was explained to Mr. Heber at that time.

(Deposition of Robert E. Bole.)

A. The projection in the length was just slightly smaller than the bore of the reamer; that is, the lower projection. The width of the key itself, or the length I should say, would be practically the size of the outside diameter of the body of the reamer.

Q. 13. And what was the shape of this projection that fitted into the bore?

A. Well, it was a square projection. I presume you would call it that. It projected downwardly.

Q. 14. Was there anyone else present at any portion of this conversation between Mr. Heber and yourself?

A. There was a Mr. Adams—Gus Adams—at the shop. I believe he was there at the time. He was very emphatic in his objections to the old style reamer, and I explained this new reamer that I would send up, and it seemed to thoroughly satisfy him: Really, at that time he was just a machinist, and the reason he had such a kick was because he had all the work to do.

Q. 15. Please explain in full this under-reamer you so proposed to Mr. Adams and Mr. Heber to have made and sent to the [514—453] Sunset-Monarch Company at that time.

A. The body of the reamer inside was bored out, and inside of the body of the reamer was suspended on the spring the tee bar. Suspended from the lower end of the tee bar were the cutters, and this key which I spoke of was driven underneath the spring through the slot from the side of the body. The spring already had a tension on it, and the driv-

(Deposition of Robert E. Bole.)

ing of the key would increase this tension. It would increase this tension and bring the cutters up to their proper seats. The slot was a fraction larger all the way through than the largest depth of the tee, which allowed it to enter free and at the same time keep it straight. When the key snapped down into place, the lower projection of it fitted into the bore of the reamer, and there was an opening at the top which would be a little over the depth of the projection below.

Q. 16. What was that space to which you have last referred left for?

A. You had to leave that space in order to get the key into the body of the reamer.

Q. 17. You have referred to a tee bar. How did you propose to form that tee bar, and for what purpose was it to be used?

A. It was to be used to suspend the cutters. It was slotted, and through the slot the key was forced.

Q. 18. How long a slot, and for what purpose was the slot?

A. The slot was of a length to allow the cutters their full stroke or full sway.

Q. 19. For what purpose did they have such stroke?

A. For the putting in and pulling out the reamer from the hole.

Q. 20. Collapsion and expansion of the bits?

A. Yes, sir.

Q. 21. How were the cutters to be hung on the tee bar that you referred to? [515—454]



(Deposition of Robert E. Bole.)

A. We were to do away with the slot. The cutter was to have a projection at the upper edge, and the tee bar was to be made at its base practically square.

Q. 22. And the cutters or bits—

A. (Interrupting.) That was my intention at the time.

Q. 23. And the cutters or bits were hung on the projecting ends of this tee bar in what manner?

A. Are you referring to my idea at the time as to which was the best reamer?

Q. 24. The one that you described to Mr. Adams and Mr. Heber.

A. Those cutters were suspended by this lug over the top.

Q. 25. How was the spring that you refer to to be mounted in the bore of that reamer?

A. It was to be loosely mounted on the tee bar. Tension was to be taken on it by a nut and washer on top.

Q. 26. And then was there a coil spring surrounding the tee bar? A. Yes, sir.

Q. 27. And on what did the lower end of the spring rest?

A. It rested on a shoulder on the heavy part of the tee bar, the outside of this heavy part being practically the same diameter as the outside of the spring.

Mr. BLAKESLEE.—We ask that that answer be stricken out as not responsive to the question, and we call attention of counsel to the fact that the witness is not answering as to his plans, but rather as to construction, and the question did not involve

(Deposition of Robert E. Bole.)

completed construction.

Q. 28. (By Mr. LYON.) What was the purpose, Mr. Bole, of such key device as you explained to Mr. Adams and Mr. Heber?

A. It was for the purpose, principally, of quickly overcoming the difficulty that they had with the pins in the sides. At the [516—455] same time, the purpose developed that it was quicker to mount and dismount the cutters—quicker and simpler all the way through.

Q. 29. You had, then, prior to that time, been familiar with this block and screw type of Wilson under-reamer, had you?

A. Yes, sir; but I can't say how familiar.

Q. 30. And such under-reamer was giving substantial satisfaction with exception of the difficulty in removing the screws or pins to permit changing the bits for the purpose of resharpening or putting on new bits?

A. To the best of my knowledge it was giving satisfaction, with the exception of that defect; but, according to the reports on it, that was some defect.

Q. 31. And at the time you had this conversation with Mr. Heber and Mr. Adams in September, 1908, it was your object to overcome the trouble of removing the bits from the reamer, was it?

Mr. BLAKESLEE.—Objected to as leading and suggestive.

Mr. LYON.—The question is withdrawn.

Q. 32. What was the purpose of using or propos-

(Deposition of Robert E. Bole.)

ing to use the single-piece key which you have described?

A. The overcoming of the difficulty experienced with a block and screw type of Wilson reamer.

Q. 33. How did you propose at that time, in this conversation with Mr. Heber and Mr. Adams, to remove such single-piece key for the purpose of dismantling the reamer or removing the bits.

Mr. BLAKESLEE.—Objected to as not the proper method of proof. We will ask that the testimony be limited to what was said at the time of this purported conversation, and not what the proposition was before the house, but what was said with regard to any such proposition.

A. It was very simple. The one upper corner of the key was broken or planed off at an angle. By putting a drift or driving a [517—456] drift under this side of the key we could raise it up to such a position that the lower projection would come out and hit a little above the hole or slot in the side of the reamer. In that manner it would tilt the opposite side of the key downward and expose it to the opposite side of the reamer body, and then by taking the hammer and hitting this exposed side a crack, the key with the tension of the spring above would almost fly out. This was my contention at the time, and afterwards proved to be the case.

Q. 34. (By Mr. LYON.) After explaining this construction of under-reamer embodying such single-piece key to Mr. Heber and Mr. Adams in September, 1908, what did you first do with reference

(Deposition of Robert E. Bole.)

to having such a reamer built?

A. Mr. Heber gave me an order for such a reamer.

Q. 35. Do you remember when it was that he gave you such an order?

A. It was during this period of time. I can't just state the date exactly. I went from Maricopa to Coalinga, and on my way I mailed a letter to the Wilson & Willard Manufacturing Company of Los Angeles ordering this reamer.

Q. 36. Have you such letter? A. No, sir.

Q. 37. Please state what said letter contained with reference to this order for this 95/8 inch under-reamer for said Sunset-Monarch Oil Company.

A. I ordered this reamer to be made up and shipped immediately, and a description of the reamer was right on the letter. I described it as I went along, and made sketches as I desired it. The spear, I notified them that as soon as I returned to Los Angeles I would have forgings made to make it up at once, but to ship the reamer immediately—to make up and ship the reamer immediately.

Q. 38. You say this letter contained sketches of the under-reamer. [518—457] What parts were sketched out in that letter or order?

A. Principally the key and the tee bar. Prior to this the Wilson & Willard Manufacturing Company had a reamer which had a tee bar in something similar to the one that I intended to make, but this tee bar was to be made heavier and the key was a very simple proposition, and I intended to leave it until I got down and made it up. But at the same

(Deposition of Robert E. Bole.)

time, I told Mr. Willard to go ahead and make up this reamer, and as soon as I got back we would make it up and ship it up

Q. 39. What did such a letter contain in the shape of sketches of a tee bar and key? Please describe such sketches.

A. Well, they were rough sketches. The Wilson & Willard Manufacturing Company was familiar with their own manufacture of reamer bodies, so it was not necessary to make any full sketch of that except the change in the old block and screw type to this new reamer that I wanted to make.

Q. 40. I don't think you quite understand the question. The question is to describe the sketch or sketches contained in that letter. State just what they showed and what they were.

A. As I went along in the letter I described the new-style reamer and with each description I drew a sketch. I drew a sketch of this key and drew a sketch of the tee bar, and showed him how he could make it heavier than the old style, or the one that had broken all the time and gave them the trouble.

Q. 41. How in that letter did you show him that you could make such tee bar heavier?

A. By the sketch.

Q. 42. In what manner?

A. By enlarging the hold of the reamer and flattening out the spring.

Q. 43. How did you describe in that letter the use of this key [519—458] in the tee bar? Please give as near as you can the words of such description



(Deposition of Robert E. Bole.)

as you now recollect them.

A. The key was a 1-piece key, to be loosely mounted in this slot. It went through the side of the reamer and through the tee bar, which helped to compress the spring and which, when driven in place with the projection on the bottom, would snap into the bore of the body of the reamer.

Q. 44. The sketch of that key showed what kind of a surface the upper edge of the key had?

Mr. BLAKESLEE.—Objected to as leading. Let the witness describe the key.

A. The key is a kind of a simple proposition and yet is is very hard to describe. I can make a sketch of it.

Q. 45. By Mr. LYON.—Can you reproduce that sketch which is contained in that letter?

A. Yes, sir.

Q. 46. Please do so. And, at the same time, reproduce from memory the sketch of the tee bar as contained in that letter.

A. (Making diagram.) Those are the two sketches as near as I can now reproduce them.

Q. 47. And what does the upper of these two sketches show?

A. The upper of the two sketches shows the key in place in the body of the reamer when it is in working position to go in the hole. It shows the spring below compressed when the cutters are up in the body of the reamer. It shows a section of the spring and a section of the body.

Q. 48. Please mark with the word “key” the

(Deposition of Robert E. Bole.)

representation of the key in this sketch.

A. (The witness does as requested.)

Q. 49. Likewise, mark on this first sketch the tee bar with the words "Tee Bar." [520—459]

A. (The witness does as requested.)

Q. 50. And the spring in the same manner.

A. (The witness does as requested.)

Q. 51. What do the four sections unmarked represent? A. The reamer body.

Q. 52. Indicate the same with the term "Reamer Body." A. (Witness does as requested.)

Q. 53. This order was for what kind of bits or cutters? I mean the order that you sent in for the Sunset-Monarch Oil Company in September, 1908.

A. The order was for the ordinary bits or cutters used in the Wilson reamer at that time—that was not mentioned in the letter to my knowledge.

Q. 54. Then what other changes, if any, in such standard Wilson reamer did you suggest in such letter and order, other than the change in the tee bar and the use of the single-piece key?

Mr. BLAKESLEE.—Objected to as leading.

A. I had not suggested any other changes except that I had a description of the key as I wanted it made. I realized the fact that to change the cutters as I wanted to would necessitate great expense. The key and the tee bar would not. So these two sketches were practically what was mentioned in the letter in ordering this reamer.

Q. 55. (By Mr. LYON.) What does the dotted line in this top sketch that you have reproduced indicate?

(Deposition of Robert E. Bole.)

A. It indicates the bottom end of the key. It is supposed to be invisible on account of the tee bar being sketched over it.

Mr. LYON.—The sketch just reproduced by the witness is offered in evidence and we ask that it be marked “Bole’s Exhibit Reproduction of 1908 Sunset-Monarch Order Sketches.” [521—460]

(The said sketch so offered in evidence is marked as requested, together with the title of the court and cause, and the date upon which the same was offered in evidence.)

Q. 56. (By Mr. LYON.) I show you a postal card marked “Bole’s Exhibit Bole-Heber Postal Card,” and ask you if you have ever seen it before.

A. Yes, sir; that is my writing. I mailed that from Coalinga, according to the date on it. The Coalinga postoffice stamp is September 19, 1908.

Q. 57. By means of this postal card are you able to fix the date upon which you secured this order from Mr. R. L. Heber of the Sunset-Monarch Oil Company for this under-reamer which you referred to?

Mr. BLAKESLEE.—Objected to as leading.

A. It is evidently prior to September 19, or it was on September 18 or earlier, because from this postal card I do not believe I could have left Maricopa on September 19 and got into Coalinga on the same day. So it must have been September 18 or prior to that that I mailed this order to the Wilson & Willard Manufacturing Company of Los Angeles.

Q. 58. (By Mr. LYON). Did you keep a time-

(Deposition of Robert E. Bole.)

book of any kind with you during that time?

A. My time, when I was with the Wilson & Willard Manufacturing Company?

Q. 59. Yes, sir.

A. That was prior to this and afterwards—yes.

Q. 60. Have you such a time-book?

A. I couldn't call it a time-book; it is a memorandum-book. I have it, but I haven't it with me.

Q. 61. I will ask you to produce such time-book at the next [522—461] session of this testimony. Now, Mr. Bole, after you went to Coalinga, California, and were there on the 19th of September, 1908, did you thereafter return to Los Angeles, California?

A. Yes. I returned to Los Angeles, and my recollection is that I went to Maricopa Saturday or Sunday, and from there I went to Coalinga, and I think all told I was gone about a week. I know I was not working from the 12th to the 20th; I was away at Coalinga and Maricopa during that period.

Q. 62. And after the 20th of September where did you work?

A. I worked in the shops of the Wilson & Willard Manufacturing Company.

Q. 63. After you got back to the shops of the Wilson & Willard Manufacturing Company in Los Angeles, California, on or about the 21st of September, 1908, did you see Mr. Arthur G. Willard there?

A. Yes, sir.

Q. 64. Was Mr. Elihu C. Wilson there?

A. No, sir.

(Deposition of Robert E. Bole.)

Q. 65. Did you have any conversation with Mr. Willard in regard to this Sunset-Monarch order for under-reamers? A. Yes, sir.

Q. 66. Please state such conversation.

A. Mr. Willard told me that he had taken the matter up with Mr. Wilson, who was at Bakersfield, and that Mr. Wilson would not make the key that I desired.

Q. 67. Was that the whole of the conversation?

A. No, sir.

Q. 68. Please give the rest of the conversation.

A. Mr. Willard said that that reamer had proven a failure, and Mr. Wilson would never make it again; that he had made something like twenty-five or twenty-six, and the tee bars would break off just above the heavy part, just where the lower part of [523—462] the spring sets on its seat on the tee bar.

Q. 69. Is that all of the conversation?

A. Mr. Willard convinced me at the time, or tried to convince me, that it would not be policy to send this order up or to send this reamer as suggested, and in fact, he made it clear that Mr. Wilson would stand for no change in the reamer whatsoever, and he said that they had decided to send the reamer of the block and screw type, and that Mr. Wilson believed he would call on the Sunset-Monarch Oil Company and convince them, and that we could take a chance. I told them that I thought it would be returned.

Mr. BLAKESLEE.—We ask that all this answer be stricken out as hearsay, being mainly made up of



(Deposition of Robert E. Bole.)

what Mr. Willard is purported to have stated; that it is not the proper method of proof, nor the best evidence.

Q. 70. (By Mr. LYON.) Was there anything said in such conversation between Mr. Willard and yourself at that time with reference to the making of a heavier tee bar? A. Yes, sir.

Q. 71. Please state what it was.

A. I told Mr. Willard that we could overcome that difficulty of the tee bar breaking, and bore out the body of the reamer larger and we could flatten out the spring and put a flat spring in in place of a round spring, and get the same strength of spring and make a heavier tee bar, and, if necessary, we could make this key very thin and deep, and that would add strength to the tee bar.

Q. 72. After the conversation did you have at any time any conversation with Mr. Elihu C. Wilson in regard to the making of such an under-reamer embodying the single-piece key as you have designated and illustrated in your sketch?

A. Yes, sir; many times. [524—463]

Q. 73. During what period of time did such conversations take place?

A. I don't just remember when Mr. Wilson came to Los Angeles. Our pump business at that time was not very large, and until it got to be a paying proposition I had very little conversation with Mr. Wilson. After that we got more familiar and I brought this subject up on different occasions. Mr. Wilson believed that his reamer was as good as it

(Deposition of Robert E. Bole.)

could be made, and would not listen to me on that line. One time he did mention the fact that to put such a loose-piece key in there, that the mud would work in and interfere with the working of the reamer. And he explained that that was the reason that he fit his plugs in the block and screw type as tight as he did—to keep the mud out—and in the working up of the 2-piece key reamer he filed that to a perfect fit.

Q. 74. Did such parts as last referred to fit in that manner in the Wilson reamers?

A. They were fit in very tight.

Q. 75. Was there ever at any time one of these reamers made embodying such single-piece key?

A. Not to my knowledge, until the spring of 1911.

Q. 76. State the circumstances under which that reamer was constructed.

A. Mr. Wilson was having trouble; his sales were dropping off in the different oil fields, and the subject came up one day between him and me as to what was the cause of it. I suggested that a reamer such as I had ordered for the Sunset-Monarch Oil Company would overcome this difficulty, and he said, "It seems to me Mr. Willard and I had some correspondence on that." I said, "You certainly did," and he said, "What was that like?" I described the key and the tee bar as I had suggested in that letter at that time. That was some time along, I think, in the middle of January, 1911. [525—464]

Q. 77. And that time did you have any conversation with Mr. Elihu C. Wilson as to the manner of

(Deposition of Robert E. Bole.)

removing such single-piece key from such reamer?

Mr. BLAKESLEE.—Objected to as leading and suggestive. A. Yes, sir.

Q. 78. (By Mr. LYON.) State what that conversation was. A. We had several conversations.

Q. 79. Where and when?

A. In the shop of the Wilson & Willard Manufacturing Company.

Q. 80. Who was present at such conversations?

A. I don't remember of anybody but Mr. Wilson at any such conversation, with possibly one exception.

Q. 81. When was that, and where?

A. That was one time there when we were talking over this proposition. Mr. Wilson insisted that I couldn't get the key out of the reamer, and at that time a foreman that I had, Mr. Naphas, happened to come along with some work from the pump department, and I believe he heard part of the conversation.

Q. 82. You have heard the testimony of Mr. E. C. Wilson in this case, have you? A. Yes, sir.

Q. 83. And his statement in regard to an alleged conversation and an alleged conference which he states he called to discuss this single-piece key. What have you to say with reference to such testimony?

A. I don't remember any such conversation where he called a party of men together in the shop there as he describes.

Q. 84. Have you any sketch which you can produce which was made at any time in 1911 of such single-

(Deposition of Robert E. Bole.)

piece key, either with or without the removing device for removing such key?

Mr. BLAKESLEE.—Objected to as grossly leading and suggestive. [526—465]

A. I have a sketch. At the time I did not believe that Mr. Wilson would lay any claim to that key whatsoever, and at that time he said something about could I make a tool to remove this key, and I made a tool, or a sketch of such a tool, which I have at the present time.

Q. 85. (By Mr. LYON.) Please produce such sketch. A. (The witness produces a sketch.)

Q. 86. When was this sketch made?

A. January 27, 1911.

Q. 87. And where was it made?

A. It was made in the office of the Willard & Wilson Manufacturing Company.

Q. 88. I notice that it contains the signatures of two witnesses. Who were these men?

A. Mr. W. H. Fahnestock, who is now bookkeeper of the Wilson & Willard Manufacturing Company, and Mr. E. F. Grigsby, who was at that time shipping clerk.

Q. 89. And what was the purpose of making this particular sketch?

A. Mr. Wilson didn't believe I could get my key out of the reamer, and I told him I could devise such a tool. I did devise it, and drew it up and had it witnessed.

Mr. LYON.—The sketch produced by the witness is offered in evidence as "Bole's Exhibit January 27, 1911, Sketch."

(Deposition of Robert E. Bole.)

(The said sketch so offered in evidence is marked as requested, together with the title of the court and cause and date on which the said exhibit was offered in evidence.)

Q. 90. (By Mr. Lyon.) You have stated, I believe, that a reamer embodying this single-piece key device as devised by you [527—466] was manufactured by the Wilson & Willard Manufacturing Company in the spring of 1911. Please give us the history of such construction.

A. Somewhere around the middle of January, Mr. Wilson, in taking this matter up of this new-style reamer, still held out that this key would not do the work. But he liked the idea of the heavier tee bar, and he decided to make a reamer along that line, increasing the size of the weakest part of the tee bar, and flattening out the spring and boring out the reamer. At that time he intended to use his old 2-piece key in this reamer, with a plug to hold it in place, and, accordingly, he gave an order to change over a reamer that he had in stock there and bore out the body and change it over to fit an extra heavy tee bar or new tee bar and a spring. I believe he gave an order for a tee bar and spring together, and an order to change over the reamer. He did not give an order for cutters, because he had those in stock. He did not give an order for a bottom bolt because he had those in stock; he did not give an order for a 2-piece key, because he had those in stock. He did not give an order for the plug to fit in behind the two-piece key. He had plugs in stock.



(Deposition of Robert E. Bole.)

I persuaded him to let me make up this 1-piece key, and I made a sketch of such key. This sketch was attached to an order that was made out for the making up of that key, and it had my name on it. I have never seen that order since. The reamer was bored out—the bore of it was enlarged; the slot was put in, and the single-piece key was made up under my instructions. The key was fitted in the body of the reamer and worked perfectly, and was thereafter adopted. [528—467]

Q. 91. And how was that key mounted in the body of that reamer?

A. The key was loosely mounted in this slot in the body of the reamer. By “loosely” I mean where there was no tension on the key by the spring above the key would be perfectly loose. You could put it in and take it out, and it would be perfectly free. Of course, when you put the tension on the spring, the lower part would snap into place in the reamer body.

(The hour of 5:15 P. M. having arrived, a discussion is taken up between counsel concerning the time for resuming the taking of proof, counsel for Bole suggesting a session this evening, counsel for Wilson stating that it is inconvenient for his client to be present.)

Mr. BLAKESLEE.—Let the record show that these proceedings were taken pursuant to no formal notice, and that we have proceeded upon a mere informal agreement between counsel to commence the taking of proofs on behalf of Bole at the hour of

(Deposition of Robert E. Bole.)

9:30 A. M., this present day; that the party Wilson and his counsel were here present at that time and were informed that no proceedings would be taken until a later hour; that it was then 5 minutes past the hour of 11 A. M., when counsel for Bole notified counsel for Wilson that he would proceed, and we then repaired to this place, and testimonay has been taken from that time until the present hour, 5:15 P. M., subject to a noon adjournment of an hour and a half; that there has been no agreement as to the taking of any testimony out of the regular hours of court, and ordinary business hours; that seven weeks of the time for the party Bole to take proofs have elapsed and no proofs have been taken by the party Bole prior to the present day; that an engagement [529—468] and convenience of the party Wilson and his counsel make it irksome and inconvenient to proceed with night sessions in this case, as requested by counsel for Bole; that we can see no good and sufficient reason as yet proffered for such night sessions; and at this present hour of 5:15 P. M. we will ask the notary to note an adjournment until to-morrow morning at 10 o'clock A. M., whereupon the party Wilson and his counsel withdraw.

Mr. LYON.—While counsel for Wilson is yet present, we proceed with the direct examination of Mr. Bole.

Q. 92. You have heard the testimony of Mr. E. C. Wilson to the effect that at the time when in 1913 you made a settlement of your pump business (At this time counsel for Wilson retires from the room.)

(Deposition of Robert E. Bole.)

with the Wilson & Willard Manufacturing Company, that you stated to him, E. C. Wilson, that he need not fear your making any claim to the invention involved in this interference. What have you to say in regard to such testimony?

A. I don't remember any such conversation whatever.

Q. 93. Did you have such a conversation with him? A. No, sir; I did not.

Mr. LYON.—Direct examination closed. Opportunity is now afforded counsel for Wilson and the party Wilson to cross-examine the witness. It being now 5:17 P. M., counsel for Wilson having departed during the asking of the last two questions, and having abandoned the proceedings, an adjournment is now taken until 1 o'clock P M, on Tuesday, September 22, 1914. [530—469]

Redirect Examination.

(By Mr. LYON.)

Q. Referring to the conversation with Mr. W. H. Fahnestock at his house, please give that conversation.

A. As near as I can recollect, when I went in Mr. Fahnestock explained to me that his wife and the children were at the picture show, or something like that; and he told me that he did not remember ever signing this sketch, and he wanted me to say something that would recall to his mind what had occurred at the time in order that he could remember having signed that sketch. He said he wanted to help me out if he could, and that he wanted to

(Deposition of Robert E. Bole.)

[531—470] remember it if he could, but he wanted me to refer to something that occurred at that time that would cause him to remember having signed the sketch; and I told him, "Mr. Fahnestock, I can't tell you anything that occurred at that time. You are going on the stand to-morrow to testify in this case, and you can't expect me to tell you anything about it." I says, I wouldn't do it, and I refused absolutely to tell him what I knew about it. And then he got mad, and said, "Well," he says, "this man Carlson says these signatures are forged, and it is up to you. If you don't want to help yourself out, I don't care." He says, "I believe they are forged." And I says, "Well," I says, "all right; if you believe they are forged you go on the stand to-morrow and say so." That was the sum and substance of that conversation.

Q. How did you come to go to Fahnestock's house?

A. Mr. Fahnestock was at your place looking for me two or three times that day, and called me up on the telephone that night and asked me if I wouldn't come out to his house.

Q. And before going there you saw me about it, did you?

A. Before going there I called you up by telephone at your house and told you what he wanted.

Q. What did I tell you?

A. You told me to go out and see him, and you advised me to be careful what I said to him; that he was probably trying to lay a trap of some kind to catch me.

(Deposition of Robert E. Bole.)

Q. Mr. Fahnestock was at that time in the employ of the Wilson & Willard Manufacturing Company?

A. The Wilson & Willard Manufacturing Company. He further undertook to point out in the signatures where he didn't make a signature like that, and where he didn't make a hook on his "W," or a disconnected "a," or something like that. He went through that. Another thing he said, I said, "Do you actually think, Mr. Fahnestock, that I would do a thing like that?" He says, "Why not?" [532—471] He says, "The stakes are high."

Q. You have been interrogated on cross-examination as to part of a conversation which you had with Mr. A. G. Willard in regard to a search on the records of the Wilson & Willard Manufacturing Company for this Sunset-Monarch order of 1908. Have you given us all of that conversation that you now remember?

A. For the search of the record—

Q. For the Sunset-Monarch order; yes, sir.

A. All of it that I can recall now.

Q. For the purpose of refreshing your recollection, was there anything said in that conversation between Mr. A. G. Willard and yourself as to who was the inventor of this single-piece key device?

A. I don't recall that, Mr. Lyon. Mr. Willard knew that I was the inventor of it.

Mr. BLAKESLEE.—We ask that that be stricken out as a statement or conclusion of the witness.

The COURT.—The motion is granted.



(Deposition of Robert E. Bole.)

Q. (By Mr. LYON.) What was the purpose of this search by Mr. Willard?

A. Mr. Willard wanted to see what the shape of the key was exactly, to refresh his memory.

Mr. BLAKESLEE.—We object to that as a conclusion, and not a statement of what Mr. Willard said.

The COURT.—He didn't ask what Mr. Willard said. He asked for his purpose, and there was no objection to the question.

Q. (By Mr LYON.) You have been asked to try "Defendants' Exhibits 12 and 11" in "Defendants' Exhibit 1," the under-reamer, and see if you can remove the key, "Defendants' Exhibit 11," from the reamer, by such device "Defendants' Exhibit 12." Did you make this device, Exhibit 12?

A. No, sir. [533—472]

Q. What, in your opinion, based upon your experience as a mechanic, would be necessary with this device "Exhibit 12" to enable it to be driven under such key?

Mr. BLAKESLEE.—We object to that as calling for mere matter of opinion and not a statement of facts. Let the witness testify to the nature of the device and compare it with anything else. But his opinion is not proper.

The COURT.—I think I will overrule the objection. I would like to know what he thinks the difference is between this device and that other one.

A. You could drive this tool in there and get it under there, if you would break the lower corner of

(Deposition of Robert E. Bole.)

the slot on one side of the reamer body so as you could just enter this a little bit—just start it. Then you could drive this in. Or, by breaking the corner of the key just enough to allow this to enter. This probably should be a little harder. It looks like it has been case-hardened. It looks like it should be a little harder and be sharpened a little.

Q. (By Mr. LYON.) Since the noon adjournment, have you tried to lift up the key in “Defendants’ Exhibit 11” as exhibited in “Defendants’ Exhibit 1” by the key-removing tool of Defendants’ Exhibit 1”?

A. Yes, sir.

Q. What did you find with regard to the two sides of such key in such attempt?

A. I could not get it in on one side, but I could on the other, though.

Q. And why was that?

A. Because the space on one side is probably of a shape which allows this to start a little better than on the other side. Possibly there is a little more space to allow it to start.

Mr. LYON.—That is all. [534—473]

Recross-examination.

(By Mr. BLAKESLEE.)

Q. Now, you have testified further as to what took place at the time of your visit to Mr. Fahnestock at his house in October, 1914. At that time did not Mr. Fahnestock say to you that he didn’t remember of your explaining anything about that sketch, and did you not then say that you just asked Mr. Fahnestock to witness it and that is all?

(Deposition of Robert E. Bole.)

Mr. LYON.—We object to that as a mere repetition. It is exactly the same question as before.

The COURT.—I don't think it is. It is plainer than it was before. Answer the question.

A. No, sir; I did not.

Q. (By Mr. BLAKESLEE.) You have spoken of certain modifications that might be necessary in the shape of the lever and key which were attempted to be used this morning in the removal of the key from the exhibit reamer "Defendants' Exhibit 1." The key and lever conform to the sketch, do they not, at the parts which you say might well be modified?

A. Well, that is a pretty small sketch. I couldn't say that. That thing would have to be tried out, anyhow. I didn't refer to the key and this tool alone. I said you would not have to alter it,—this tool and the key, you could round out the bottom of the slot a little.

Q. And sharpen the lever a little bit on the end?

A. Yes, you can do that, but I don't believe it would be necessary.

Q. Then if you did that, you would have the pointed end of the drift that you thought of in 1908, as you say. Isn't that correct?

A. If you sharpen this?

Q. Yes. [535—474]

A. I say it is not necessary to sharpen this.

Q. It is not?

A. No. This could probably be ground off a little bit sharper than it is. It is rather blunt. That has probably been made so that thing won't come out.

(Deposition of Robert E. Bole.)

Q. In other words, you couldn't get it in unless it were shaped off a bit; is that correct?

A. No, sir; you could get it in that reamer.

Q. Can you get it in now?

A. If the reamer is not hardened so that I couldn't touch it with a file, I could get it in now.

Q. Can you get it in now at either end of the key?

A. You mean without altering the reamer?

Q. Yes, sir.

A. Not without altering the reamer itself.

Mr. BLAKESLEE.—That is all.

Mr. LYON.—That is all.

Q. (By the COURT.) Did you during the adjournment take this key No. 12 and apply it to "Defendants' Exhibit 1" and get the key out?

A. No, sir; it was the key-removing tool that they use now. I could only remove it on one side with that tool.

The COURT.—All right. [536—475]

**[Testimony of Harry Naphas, for Plaintiffs (in Rebuttal).]**

HARRY NAPHAS, called as a witness on behalf of complainant in rebuttal, testified as follows:

Direct Examination.

(By Mr. LYON.)

Q. Your name is Harry Naphas? A. Yes, sir.

Q. You live in Los Angeles? A. Yes, sir.

Q. What is your occupation? A. Machinist.

Q. With whom are you employed?

A. The Southern Pacific Railroad.

Q. In what department?

(Testimony of Harry Naphas.)

A. The railroad department; the locomotive department.

Q. At the Southern Pacific shops? A. Yes, sir.

Q. As a machinist? A. Yes, sir.

Q. Were you at any time in the employ of the Wilson & Willard Manufacturing Company?

A. Yes, sir.

Q. When? A. I started there in 1910.

Q. And approximately how long—

A. I left there along in 1912, in November.

Q. In what department of the Wilson & Willard Manufacturing Company did you work?

A. The Bole Pump Company.

Q. You are, then, acquainted with Robert E. Bole, one of the complainants?

A. Yes, sir. [537—476]

Q. And with Mr. E. C. Wilson, one of the defendants? A. Yes, sir.

Q. At any time during your employment with the Wilson & Willard Manufacturing Company did you know of any work being done on an under-reamer in the shop of the Wilson & Willard Manufacturing Company? A. What kind of work?

Q. Any kind of an under-reamer.

A. I have seen all kinds of work done on under-reamers there.

Q. Did you ever see a single-piece key device used in any of those under-reamers?

Mr. BLAKESLEE.—Objected to as calling for a conclusion and not a statement of facts.

The COURT.—The objection is overruled.



(Testimony of Harry Naphas.)

A. Yes, sir.

Q. (By Mr. LYON.) When did you see the first of such single-piece key devices?

A. Sometime in February, 1911.

Q. Where? A. At Wilson & Willard's.

Q. Under what circumstances?

A. Well, the circumstances, the first I seen was they were having a dispute on the key and I at that time was foreman of the Bole Pump Company and went over to ask Mr. Bole something about some pumps we were building, and Mr. Bole was standing there and Mr. Wilson came down the shop, and they were trying to get the key out—Mr. Bole was—I wasn't—and Mr. Wilson says, "You have got it in; now let us see you get it out."

Q. Give us the rest of the conversation and state what was done at that time.

A. Mr. Bole took an old file, something similar to this, which I used to file my plungers with, and drove it in and [538—477] started to wedge it, and it started to come, and I walked away. And that is all I—

Q. Who was the Mr. Wilson that you say was there at that time?

A. Mr. Wilson sitting right there.

Q. You mean E. C. Wilson?

A. E. C. Wilson, not Web.

Q. Prior to that time had you ever had any knowledge of such single-piece key being made in the shop of the Wilson & Willard Manufacturing Company?

A. No, sir.

(Testimony of Harry Naphas.)

Q. I mean when did you first know that a single-piece key was being made there?

A. That was around in January or February, 1911.

Q. Where did you first see such a single-piece key, yourself, I mean?

A. I seen it setting on the milling machine when the reamer was being milled. When they were milling it out for the cutters to set in.

The COURT.—I don't understand that. What were they milling out? A. Milling out the sides.

Q. For putting that slot in for the key?

A. No; that was done on the drill press, I believe.

The COURT.—Go ahead with the witness.

Q. (By Mr. LYON.) Did you ever see the single-piece key itself before you saw Mr. Bole prying it up with the end of a file in the presence of Mr. E. C. Wilson? If so, tell us where you saw it.

A. Only in the shop, coming in in the morning while it was setting on horses, there.

Q. Not the reamer, but the key itself.

A. Oh, the key? The first I seen that was when Mr. Wills handed it over to Robert E. Bole at his desk.

Q. What desk? [539—478]

A. At my desk where I used to keep the shop orders.

Q. Was there any conversation at that time?

A. No, sir; none whatever.

Q. What did Mr. Wills do with this single-piece key at that time?

A. He gave it to Mr. Bole. That is, he didn't give

(Testimony of Harry Naphas.)

it to him; he laid it on my desk like that, and he simply picked it up.

Q. Do you know what Robert E. Bole did with that key at that time? A. No, sir; I do not.

Mr. LYON.—That is all.

Cross-examination.

(By Mr. BLAKESLEE.)

Q. When was it you saw Mr. Bole attempt to put the end of a file under this single-piece key in a reamer? A. In the morning—one morning.

Q. What morning was it?

A. It was on a morning about the middle of February, or maybe a little later, of 1911.

Q. How much later than the 15th of February?

A. I couldn't say exactly as to the day.

Q. Had you ever seen that key in that reamer before? A. No, sir.

Q. Do you know who put that key in the reamer?

A. No, sir.

Q. You didn't see the end of the file go in under the key, did you? A. Yes, sir.

Q. What happened to the key then?

A. The key started to wedge itself out.

Q. Did it move out as well as lift up? [540—479]

A. Yes, sir; it gradually lifted up, and then I seen Mr. Bole take a hammer and then hit it, and then it started to move out and up at the same time.

Q. It moved up and out when he hit it. And you didn't go away before he hit it?

A. Yes, sir; after he hit it I walked away.

Q. You didn't see the key come out?

(Testimony of Harry Naphas.)

A. No, sir.

Q. You don't know how long that key had been in there before?     A. No, sir.

Q. Did you ever see anybody else put a pointed instrument under that key?     A. No, sir.

Q. Did you see that reamer again that day?

A. Yes, sir; I seen it setting there.

Q. Was the key in it?

A. I didn't pay no attention whether it had the key in or not, after that, because I was busy and didn't have no time to look at it.

Q. Did you inspect it at any other time?

A. No, sir.

Q. Did Mr. Bole ask you to watch him?

A. No, sir.

Q. While he put that file under it?

A. No, sir. I had business there. We were making some special pumps, and I went over to ask him about it.

Q. And you are sure Mr. Wilson was there?

A. Yes, sir.

Q. Nothing was said?

A. No, sir. Mr. Wilson came up and said, "You have got it in; now how are you going to get it out?" or words to that effect.

Q. And you don't know whether Mr. Houriet or anybody else around the shop had driven a file or chisel in there before, do you? [541—480]

A. No, sir.

Q. You won't say definitely that it was before the 29th of February, 1911, will you?     A. No, sir.

(Testimony of Harry Naphas.)

Q. Have you any way of fixing that time?

A. No, sir.

Q. Do you know that it was in February, 1911?

A. Yes, sir.

Q. How?

A. Because we were making them pumps at that time, and it was in February when we made them. That is how I recall the time, that it was in the latter part of January and February that we were making the pumps.

Q. What kind of pumps?

A. We were making some special large 4-inch pumps.

Q. When were they finished? A. In February.

Q. Have you referred to any records to establish that fact? A. No, sir.

Q. It is just a case of memory from that time?

A. Yes, sir.

Q. What did you make in March, 1911?

A. Pumps, the same way.

Q. What size pumps?

A. That is, our standard-size pumps.

Q. Four-inch?

A. No, sir. These were special 4½ inch pumps.

Q. What size were you making in March, 1911?

A. Four-inch.

Q. When did you start making these 4½ inch pumps?

A. Well, we just made one special one at that time for some oil company in Santa Paula, where they were having some water trouble.



(Testimony of Harry Naphas.)

Q. And you think that was finished by the 1st of March, 1911? [542—481]

A. Somewheres around that neighborhood.

Q. Would you swear that it was finished before the 5th of March, 1911?

A. I won't state no date when it was finished, just to the day, exactly.

Q. You won't say it was the 5th of March. You have had a talk with Mr. Bole, within the last few days, haven't you?

A. Yes, sir. Yesterday he came to the shop and asked if I would come down to-day, and I said yes; and he sent a man over for me and I came here.

Q. What conversation did you have with him yesterday?

A. Didn't have any conversation at all. But he said he was going on trial for that key, and asked if I recalled that time and I says yes.

Q. Did he ask you what you recalled?

A. Yes, sir; he asked me if I recalled that I heard Mr. Wilson—

Q. And he asked you if you recalled the time that this incident with the file took place, didn't he?

A. No; he didn't exactly ask me the time.

Q. Did he tell you the time? A. No, sir.

Q. What did he have to say about the file that was used then?

A. He didn't have nothing to say about the file. I said, "You used an old file." I told him that he used an old file at that time. I says, "I recollect that you used an old file."

(Testimony of Harry Naphas.)

Q. Were you in Los Angeles all last year?

A. Yes, sir.

Q. Did Mr. Bole ask you at that time to testify for him about any of these matters in any manner?

A. No, sir.

Mr. BLAKESLEE.—That is all. [543—482]

Q. (By the COURT.) Was the file that was driven in there changed in any way, or was it a natural file? A. It was a file just similar to this one.

Q. It had been changed a little bit?

A. Well, it had been changed. It was an old, broken file.

Q. Well, had the end of it been changed?

A. Yes, sir.

Q. How?

A. Just simply similar to this here, so he could start it underneath the key. Otherwise, you couldn't get the file in there if it was blunt. So it was sharpened on the end.

Q. Since that date to whom have you told what you saw there? A. From now?

Q. From the time you saw and heard what occurred there about getting that key out, up until yesterday, did you tell anybody about it?

A. No, sir; I haven't seen nobody. I haven't seen one of the boys at the shop that I worked with or anybody to speak anything about it. In fact, I didn't know anything about it.

Q. Now, who all were there at the time this occurred?

A. Mr. Bole and I were there, and Mr. Wilson

(Testimony of Harry Naphas.)

came down in the shop in the morning, and Mr. Bole had the key in there and I went up and Mr. Wilson came down and said, "Now, how are you going to get it out?"

Q. Nobody else there present?

A. No, sir. He was standing looking at it with the key in there.

Q. This is the first time you ever testified about it?

A. Yes, sir.

Q. You never gave any evidence before about it to anybody?

A. No, sir. Mr. Bole came over and he was only in the shop about ten minutes. [544—483]

Q. At that time where were you working?

A. At the S. P. shops when Bole came over there.

Q. You had been working for Wilson?

A. And Willard.

Q. When had you quit there prior to seeing this thing driven in?

A. I quit there in November, 1912.

Q. And this occurred in— A. 1911.

Q. In 1911? A. 1911.

Q. When did you go to work for them?

A. 1910.

Q. I thought you said you were working at the Southern Pacific at that time in 1911?

A. No, sir. He asked where I was working now. Southern Pacific.

Q. Where were you working in February, 1911?

A. Wilson & Willard. I started to work there in 1910 and left there in November, 1912.

(Testimony of Harry Naphas.)

The COURT.—That is all I desire to ask.

Mr. BLAKESLEE.—I want to recall the witness for a couple of questions, if you are through.

Q. Do you know whether the valves and cages for those Bole 4½ inch pumps were made in the Wilson & Willard Manufacturing Company shops in 1911?

Mr. LYON.—We object to that as immaterial.

The COURT.—Let him answer the question.

A. They were bought from the Ackelson Company.

Q. (By Mr. BLAKESLEE.) Ackelson Company of this city? A. Yes, sir.

Q. You are sure of that?

A. It was either the East Side Machine Shop or Ackelson's Machine and Tool Works, at that time.

[545—484]

Q. Was there more than one such lot of valves and cages bought for Bole pumps?

A. Yes, sir. We used to order them right along from 1910 till I left there, from the East Side Machine Company and the Ackelson Company.

Q. Was that for all different sizes of pumps?

A. Yes, sir.

Q. Nothing especially ordered out of the shop for these 4½ inch pumps? A. Not as I can recall.

Q. You were the foreman of the Bole Pump Company, weren't you? A. Yes, sir.

Q. Were these the very first 4½ inch pumps made there for the Bole Pump Company?

A. Yes; I think they were the first ones that we were working on, and that is how I happened to be there, on account that the coil was so small that we

(Testimony of Harry Naphas.)

couldn't get the size of the bore. The hole would not clean up so that we could get a smooth cut there.

Q. And you were employed by the Bole Pump Company all the time that you were at the Wilson & Willard Manufacturing Company shop, were you?

A. I worked for the Bole Pump Company and got my check through Wilson & Willard.

Q. But you were Mr. Bole's man? A. Yes, sir.

Q. His foreman? A. Yes, sir.

Q. Responsible to him? A. Yes, sir.

Q. In other words, you took your orders from him?

A. He was my superior officer, in other words.  
[546—485]

#### Redirect Examination.

(By Mr. LYON.)

Q. You say that Mr. Bole came to see you yesterday about noon at the Southern Pacific shops?

A. Yes, sir.

Q. Now, please tell us who first mentioned anything about your having seen this under-reamer and Mr. Bole's removing the key, you or Mr. Bole.

A. I did first. Bob says he was down in court, and I says, "Are you having trouble with that key?" That was all that was said. That is all I said. And Bob said, "Yes." And he says he was going to subpoena me, and I said, "Don't subpoena me; I will come without being subpoenaed, because I don't want to be subpoenaed," and that is all there was said about it. He sent a man up to-day at ten minutes after twelve to get me.



(Testimony of Harry Naphas.)

Recross-examination.

(By Mr. BLAKESLEE.)

Q. When did you first know there was a controversy about the key?

A. I knew it the first time in November—I think it was November, 1913.

Q. How did you come to know about it at that time?

A. Mr. Welch works in the county garage, and I was there one day and he said he heard Bob was having some trouble, and that was all that was said.  
[547—486]

[Testimony of August F. Adams, for Plaintiff (in Rebuttal).]

AUGUST F. ADAMS, called on behalf of complainants, in rebuttal, testified as follows:

Direct Examination.

(By Mr. LYON.)

Q. What is your occupation, Mr. Adams?

A. By trade I am a machinist.

Q. And where are you employed at the present time? A. Sunset-Monarch Machine Works.

Q. In what capacity?

A. Foreman of the shop.

Q. And how long have you been foreman of the shop?

A. I have been foreman of the shop since 1909.

Q. Prior to that time where were you employed?

A. Why, I was working in the shop prior to that time as a machinist.

Q. And for how long had you worked in the shop

(Testimony of August F. Adams.)

as a machinist?      A. From March.

Q. March, 1908?      A. March, 1908.

Q. Are you acquainted with Mr. Robert E. Bole, one of the complainants here?      A. Yes, sir.

Q. How long have you known him?

A. I have known him since 1902.

Q. Did you see Mr. Robert E. Bole at any time during 1908?

A. Yes; I saw Mr. Bole during 1908.

Q. Where?

A. I saw him in Los Angeles here in the summer, and he come to the shop in 1908 to take the position of foreman of the shop that I worked in.

Q. Well, what time in 1908 was that? [548—487]

A. It was in September, along about the middle of September.

Q. Did he take that position as foreman of the Sunset-Monarch shop?

A. He did not.

Q. Do you know why not?

A. Well, Mr. I. E. Seegar brought a man down from San Francisco.

Q. While Mr. Bole was there in Maricopa, in September, 1908, at the Sunset-Monarch shops, did you have any conversation with him in relation to underreamers?      A. Yes; I did.

Q. Where was such conversation had?

A. It *taking* place in the machine shop at the lathe that I was running.

Q. Please tell us what that conversation was, and what either of you did during such conversation,

(Testimony of August F. Adams.)

giving the substance of the conversation, and the words, as you recollect them, as nearly as you can.

A. Why, he told me that he had got an order from Mr. Heber for a spear and an under-reamer; and he told me, at the time, he was going to put in the keys; that Mr. Heber did not like the plug and screw type reamer, and that he had gotten the key device, and he drew such a key on my lathe.

Q. Go ahead and finish the conversation. Pardon our interruption.

A. He drew a sketch of the key on the lathe with a piece of chalk. That is all the conversation that I recollect.

Q. You testified in behalf of Mr. Bole in the interference proceeding, didn't you? A. Yes, sir.

Q. And at that time made a reproduction, according to your recollection of such sketch as Mr. Bole made it? A. Yes, sir. [549—488]

Q. I show you a paper and ask you if you know what it is. A. Yes, sir.

Q. What is it?

A. That is a copy of the key for a Wilson under-reamer.

Q. When did you see this particular paper before?

A. I think at the interference hearing or suit.

Q. Do you know who made that drawing?

A. I do not know who made it.

Q. Can you make us a reproduction of the chalk sketch that Mr. Bole made upon the lathe there in the Sunset-Monarch shop in September, 1908, during the conversation that you have referred to?

(Testimony of August F. Adams.)

A. Yes, sir.

Mr. BLAKESLEE.—Let the record, please, show what was shown the witness. Let it appear on the record that the witness just had shown him “Boles Exhibit Adams Sketch,” offered in evidence in Interference No. 37,126, in re Interference Wilson vs. Bole.

Mr. LYON.—Please make such a reproduction of such chalk sketch, as you now remember it.

A. The sketch was on that order (making sketch).

Mr. LYON.—We offer this in evidence as Complainants’ Exhibit “H.” That is all. [550—489]

Cross-examination.

(By Mr. BLAKESLEE.)

Q. You and Robert E. Bole, the complainant, have been close friends for years, have you not?

A. Yes, sir.

Q. How many years? A. About twelve years.

Q. You call him “Bob,” and he calls you “Gus”? Isn’t that so? A. Yes, sir.

Q. You would do a whole lot to help “Bob” out, wouldn’t you? A. I surely would.

Q. Now, you worked at one time in the Bakersfield Iron Works shop, didn’t you? A. Yes, sir.

Q. At Bakersfield, California? A. Yes, sir.

Q. Who was superintendent of the shop at that time?

A. When I first went to work there George Barnes was superintendent of it.

Q. And who was, next? A. Mr. E. C. Wilson.

Q. One of the defendants in this case?

(Testimony of August F. Adams.)

A. Yes, sir.

Q. And Wilson under-reamers were being made at that shop, weren't they?

A. They were; but I was not employed in the shop—in the Bakersfield shop. I was in the field shop, where they did repairing, pipe-line work.

Q. You were out in the field? A. Yes.

Q. Didn't they have some kind of a key device on the gib order for holding the lower end of the spring?  
[551—490] A. They did not.

Q. Didn't they have two pieces to put in under the spring to hold it?

A. They had a two-piece key; yes.

Q. They had a two-piece key, which was wedge-shaped, and one had a little shoulder going down into the bore of the reamer, and the upper one was to hold the other by a plug? A. Yes, sir.

Q. You saw quite a number of those, didn't you?

A. Yes; I saw quite a few of them.

Q. How many did you see of that type prior to September, 1908?

A. I haven't saw so many. Probably a half a dozen, or such a matter.

Q. And since September, 1908, and up to, we will say, the first of 1912, you saw a few more, didn't you?

A. Yes; I have saw quite a few.

Q. You worked on them, and took them apart?

A. Worked on them.

Q. And repaired those reamers? A. Yes, sir.

Q. And since the first of 1912 you have seen a good many Wilson under-reamers with the single-piece



(Testimony of August F. Adams.)

key, haven't you?      A. Yes, sir.

Q. How many do you suppose?

A. Oh, I could safely say a dozen, twelve or fifteen of them.

Q. And what have you had to do with them during that time?

A. Well, the repair part, that is, the repair work that we have had to do on them, was chiefly on the working of the jaws.

Q. And you also have had considerable to do with what is known as the block and screw type, or pin and screw type, Wilson reamer, haven't you?

A. Yes, sir. [552—491]

Q. With a block with this spring?      A. Yes, sir.

Q. When did Mr. Bole, if ever, speak to you again about this thing? You say he sketched it on your lathe with a piece of chalk.

A. It seems to me like it was in the following summer, of 1909.

Q. Of 1909. Under what circumstances?

A. He was talking of having it made. I always complained about the way we had to work on those under-reamers in regard to getting the keys out. We have always had to drill them. And I was interested in that part of it.

Q. What keys were you last referring to?

A. On the two-piece key.

Q. Those were like the two-piece keys shown in these two blue-prints, were they?

A. Yes; those were.

Mr. BLAKESLEE.—Let it be shown the witness

(Testimony of August F. Adams.)

has just had submitted to him "Defendants' Exhibit Wilson Exhibit Photo 'B' of Wilson's Reamer Two-Piece Key Device," and "Defendants' Exhibit Wilson's Photo Exhibit 'A' of Two-Piece Key Device."

Q. Do you state positively that Mr. Bole did not make any sketch for you, in September, 1908, of this two-piece key device? A. Yes, sir.

Q. He did not? A. He did not.

Q. When you came down to Los Angeles to testify for Mr. Bole in the interference, last fall, did you see, before testifying, anything that showed the two-piece key—one-piece key?

A. Before testifying?

Q. Yes.

A. I saw that small sketch or drawing. [553—492]

Q. This is it (showing)? A. Yes, sir.

Q. And Mr. Bole was discussing it with his attorney, Mr. Lyon, wasn't he? A. Yes, sir.

Q. What did they say about it?

A. It seems like the conversation ran like this—there was a contrast between the signatures and the actual drawing.

Q. In what respect did they speak of that contrast?

A. Well, that is about all I recollect of it.

Q. You can't remember their words, or any of them?

A. I can't remember that; no.

Q. And you saw this sketch at that time?

A. I just saw the sketch at that time. It was in

(Testimony of August F. Adams.)

evidence at that time.

Mr. BLAKESLEE.—Let it be shown that the witness has just referred to “Defendants’ Exhibit Boles Exhibit January 27th, 1911, Sketch”—or “Complainants’ Exhibit,—

A. (Continuing.) I want to state that it was not shown to me. It was there in evidence, and all the evidence was out there, on that morning, and they didn’t take any that day, on account of some other case, and it was laying there, and I saw it.

Q. And you had a good chance to look over the exhibits there? A. I just saw that exhibit.

Q. And what did you recognize in the exhibit?

A. I didn’t recognize anything.

Q. Mr. Bole’s signature?

A. The key was all I looked at.

Q. Was your attention directed to that key by anybody?

A. No. It was owing to the fact that the key was the argument, that I noticed the key.

Mr. LYON.—That is not an answer to the question. I would like [554—493] to have the question read to the witness.

(Question read by the reporter.)

A. (Continuing.) It was not.

Q. How did you know that this key was the subject of the controversy?

A. Owing to the fact that it was the reamer, and knowing that Mr. Bole had talked to me about that same thing before.

Q. Did you know that he was in a controversy over

(Testimony of August F. Adams.)

it? A. Yes; I did.

Q. You don't remember anything said at the time you made this sketch in chalk up there in Maricopa in 1908?

A. He said the reason he was getting the order for the under-reamer from Mr. Heber was owing to the fact he was putting a different key in it; and that is how he come to show me the key—the sketch of the key, rather.

Q. Did he show you anything beside the outline of the key? A. He did not, at the time.

Q. Did he state how the key was to be used?

A. He told me he put it in the slot instead of the two-piece key and let the gib hold it in place.

Q. Did he tell you how he proposed to get the key out?

A. I think he *told he* could drive a wedge under one end of it and lift it out.

Q. And lift it out with the wedge? A. Yes.

Q. Pry it out with the wedge? A. Yes.

Q. Drive a drift under it and pry it out with a wedge?

A. Raise it with the wedge and drive it out.

Q. Did you suggest making a key like that up there? A. I did not.

Q. Did he? [555—494]

A. He did not.

Q. Did you tell him you would like to see such a key? A. I did not.

Q. No reamer ever came up with such a key that was in response to the order he told you about?

(Testimony of August F. Adams.)

A. There did not.

Q. Did you make any inquiry why that order was not filled?

A. Why, he told me that Mr. Wilson would not make the reamer with that key in it, for some unknown reason.

Q. When did he tell you that?

A. That was the first time I saw him afterwards, in the fall.

Q. How long would it have taken you to make such a key in your shop at that time?

A. To make the actual key itself?

Q. Yes.

A. It would take about an hour and a half.

Q. And it could have been slipped on in place of the two-piece key, couldn't it?

A. I don't know whether it could or not. I have never taken that into consideration at all.

Q. Why, wasn't there a slot in the key-arm and two slots in the body so you could push the key on there? A. Yes, sir; there is.

Q. Nothing to interfere with getting it through, was there?

Mr. LYON.—Objected to as incompetent. The witness has stated he never considered the question before now.

Mr. BLAKESLEE.—I want him to consider it now.

The COURT.—I will overrule the objection. This is cross-examination.

A. Nothing to interfere with getting it through there.



(Testimony of August F. Adams.)

Q. (By Mr. BLAKESLEE.) Yes.

A. There was not; no; no. [556—495]

Q. When, after that, did you next think that such a key would be handy in a Wilson reamer?

A. I always thought it would be handy to have a key of that kind in there, on account of taking it apart.

Q. Didn't you have two-piece key Wilson reamers to repair up there after September, 1908?

A. Yes; we did.

Q. You never tried to put in a single-piece key in place of a two-piece key, did you? A. We did not.

Q. Why not?

A. It was not our business to fix them, only the way that they come.

Q. Didn't you make keys for reamers up there when you were repairing reamers?

A. We made the keys to replace the ones we drilled out.

Q. And you made such two-piece keys up there?

A. Yes, sir.

Q. After the time you say Mr. Bole described this one-piece key to you? A. Yes, sir.

Q. And yet you never made, up there, a one-piece key to take the place of such worn-out two-piece keys? A. We did not.

Q. Now, you never had to drill any two-piece keys out, did you? Wasn't it merely the plug that you had to extract?

A. We have had to drill out to the thin shell and then drive them out.

(Testimony of August F. Adams.)

Q. Had to drill the plug out?

A. Drill the plug and the key, also.

Q. Why was that?

A. On account of them rusting, and corroding in there. [557—496]

Q. That was because they had been left lying around in the rain?

A. Not on account of that. It was on account of it being so close a fit that if you started to drive the key the swelling would make it too large to go through the hole.

Q. That wouldn't be rust, but it would be upsetting the metal?

A. Upsetting the metal, yes, sir.

Q. How long was that chalk sketch on your lathe up there?

A. Why, it was probably five inches long, or such a matter.

Q. How long a time, I mean?

A. Oh, how long. Why, it was there probably ten minutes.

Q. And who rubbed it out?

A. Why, it naturally would rub out. A fellow working over the compound generally puts his arm on it, you know.

Q. You rubbed it out?

A. Yes; I rubbed it out.

Q. And that evening you went to town with your friend Bob and played pool with him, didn't you, in Maricopa? A. Yes, sir.

Q. And you didn't see him send an order off for a

(Testimony of August F. Adams.)

reamer that night, did you? A. No, sir.

Q. Didn't see him make out any? A. No, sir.

Q. Did you talk about a reamer that evening,

A. We did not.

Q. You didn't see him make out an order at all on that day or on that trip? A. I did not.

Q. Didn't tell you that he had made out an order when he came over to your lathe? [558—497]

A. He told me he had got an order.

Q. He did not at any time say he had written out an order, on that trip, did he?

A. He didn't say to me that he had written out an order.

Mr. BLAKESLEE.—That is all.

(By the COURT.)

Q. What kind of a lathe is that that this was drawn on?

A. It is a compound rest of a Reed & Shipley lathe.

Q. How long was the lathe?

A. The lathe was a 12-foot bed.

Q. How wide was the bed?

A. The bed was probably 24 inches wide.

Q. And was this drawing on the bed of the lathe?

A. It was on the compound rest on the carriage, which is probably 7 inches—7 by 12.

Q. Yes. Well, what kind of surface had the lathe? A. It has a smooth surface.

Q. Bright or dull?

A. It is dull, from laying the tools on them. It was originally bright.

Q. The surface, then, on which this chalk was

(Testimony of August F. Adams.)

drawn was not a surface that was used by metal running over it?      A. No, sir, it was not.

Q. How came there to be a piece of chalk there?

A. We always have chalk at the lathe for truing up work.

Q. What was Mr. Bole doing there?

A. At Maricopa, or at the shop?

Q. No; at your lathe?

A. Oh, he come out of the office. My lathe was right at the office, and he had come out of the office, and was tickled on account of getting the order, it seemed like; and we were [559—498] working on under-reamers at that time, and he described this one single-piece key at that time right on the lathe.

Q. Well, when did you next think about that event?

A. It was owing to the fact that we did not get the reamer with the single-piece key, that I asked him probably the next time he came up.

Q. The firm you were working for were ordering this reamer?      A. Yes, sir.

Q. And you asked him about it the next time he came up?      A. Yes.

Q. And when did you next think about this chalk business?

A. I think that Mr. Bole brought it up to me the next summer, in 1910.

Q. In 1910?      A. Yes.

Q. Before this lawsuit came up?

A. Yes; before the lawsuit came up.

Q. What was said on that occasion? Do you ob-

(Testimony of August F. Adams.)

ject to that question?

Mr. BLAKESLEE.—No, sir. Any inquiry your Honor wants to make.

Q. (By the COURT.) What was said on that occasion?

A. He told me that he thought he would get his reamer made after *awhile*, that is, with this key in it.

Q. Tell all that was said on that occasion?

A. He said he thought he would get the reamer made, with the key in, which we had talked about quite often. Around about that time we were doing under-reamer work extensively.

Q. What kind of work were you doing on under-reamer work then?

A. We were doing repairing in the field.

The COURT.—I believe that is all I wanted to ask. [560—499]

(By Mr. BLAKESLEE.)

Q. Let me ask if that was not a greasy lathe surface where the sketch was made?

A. Why, it naturally would become greasy, and would be wiped off in the course of events during the day.

Q. Did you use chalk in making calculations and figurings on that greasy surface?

A. Why, yes; we do.

Q. Will the greasy surface take the chalk all right?

A. Why, we always clean off the grease.

Q. First? A. Yes.

Q. Did Bob Bole clean off the grease before he made that sketch?



(Testimony of August F. Adams.)

A. It was not necessary. It happened to be clean.

Q. It happened to be clean, but he didn't clean it off? A. No.

Q. Did you make any other sketches on that lathe in chalk, about that time, or did anybody else?

A. Why, no, any more than we would just figure something on it.

Q. Do you remember anything you wrote on that lathe in chalk that year except this key sketch you saw Mr. Bole put on? A. I do not.

Q. Not a thing? A. No.

Mr. BLAKESLEE.—That is all.

Mr. LYON.—I now wish to read in evidence the deposition of Mr. R. L. Heber, taken in this case.

Mr. BLAKESLEE.—We oppose the consideration of that deposition, in any respect whatsoever, on the ground that if any such deposition was taken it was not done within the rules or under [561—500] the statutes; and admit that we had notice of the taking of such a deposition on the date upon which I suppose it purports to have been taken, but claim that that date was a date prior to the time when the cause was at issue, and Rule 31 inhibits the taking of any such deposition, under the new equity rules or under a statute, prior to the coming of a case to issue, particularly with respect to revised statutes, Section 863, which is the only section under which such deposition could be taken, generally, with the limitations imposed by sections 864, 865, et seq. (Reads.)

Mr. LYON.—We contend that this deposition was taken under sections of the revised statutes Nos. 863,

(Testimony of August F. Adams.)

865, 866, 867, and under Rule 54. On August 21, 1914, the notice of motion, and motion to strike out the alleged counterclaim was filed.

The COURT.—When was the answer filed?

Mr. LYON.—The answer was filed August 19, 1914, with a counterclaim therein. On October 28, 1914, Judge Bledsoe granted the motion to strike out the counterclaim from the answer, and that order was entered on October 28, 1914; and the case was then at issue on the bill and answer, under the equity rules. The notice of the deposition was given as recited in the deposition before your Honor.

Mr. BLAKESLEE.—More than sixty days after that time.

The COURT.—The notice was given February 11, 1915.

Mr. BLAKESLEE.—More than a hundred days after that time.

The COURT.—Now, when was the counterclaim stricken out?

Mr. LYON.—The 28th of October.

Mr. BLAKESLEE.—The 28th of October.

The COURT.—This seems to be an important matter. I will not rule on the matter of the objection to this deposition until to-morrow.

Mr. LYON.—With that deposition, we close our case in rebuttal. [562—501]

The COURT.—I understand there was no motion made to suppress this deposition?

Mr. LYON.—No.

(Testimony of E. C. Wilson.)

Mr. BLAKESLEE.—No. sir.

(Discussion.)

The COURT.—Proceed with your case, Mr. Blakeslee. [563—502]

**[Testimony of E. C. Wilson, for Defendants  
(Recalled).]**

E. C. WILSON, recalled, testified on behalf of the defendants, as follows:

Direct Examination.

(By Mr. BLAKESLEE.)

Q. You are the defendant in this case who has previously testified, Mr. Wilson? A. I am.

Q. You have heard all of the testimony given by the witnesses for the complainants in this case?

A. Yes, sir.

Q. Mr. Bole, the complainant, testified as to several conversations had with you prior to January 27, 1911, with respect to a single-pieec key device. What have you to say as to any such conversations?

Mr. LYON.—We object, on the ground that that is not rebuttal. It has aldeady been gone over in the testimony of the witness. He denied he had any conversation with Mr. Bole in relation to it.

The COURT.—It will be shorter to let him deny it again, if he denies it. It won't hurt. Objection overruled.

A. I had no such conversation with Mr. Bole.

Q. (By Mr. BLAKESLEE.) Did you at any time prior to the making out of the order for the first Wilson reamer with the single-piece key device, dis-

(Testimony of E. C. Wilson.)

cuss, at any time or at any place or in any manner, with R. E. Bole, the complainant, such single-piece key device?

Mr. LYON.—That is objected to as leading, and calling for the conclusion of the witness, and not—

The COURT.—He says he had no discussion with him at all. Why ask him any more questions about it?

Mr. BLAKESLEE.—I think that is probably sufficient.

Q. What have you to say as to the testimony of Mr. Bole in regard to any occasion upon which he attempted to remove a single-piece key device from a Wilson under-reamer at the shop of the [564—503] Wilson & Willard Manufacturing Company in the early part of 1911?

A. That was the first statement or information I have ever heard, or the first time it has ever come to my notice—

Mr. LYON.—We object to the form of the answer.

Q. (By the COURT.) Mr. Witness, you heard Mr. Bole and this man Mr. Naphas testify that you came up when they were together and this key was in that machine and you stated, according to the testimony, “Now, you have got it in. How will you get it out?” And Mr. Bole said, “Drive it out,” or words to that effect. Did that conversation occur?

A. It did not.

Q. Did you see Mr. Bole drive the drift in, as he called it, and drive the key out? A. I did not.

Q. Did you see that occurrence that Mr. Naphas

(Testimony of E. C. Wilson.)

testified about when he said you came up, and he was there and nobody else but Mr. Bole and Mr. Naphas and yourself?

A. I remember of no such an occurrence.

Q. Your idea is that no such thing occurred?

A. That is my recollection, yes, sir.

The COURT.—Now, you can ask him leading questions about these things these witnesses testified about. Get right at it and see what he says about it.

Mr. BLAKESLEE.—All right.

Q. Was there any such occurrence when Mr. Wilcox was present?

The COURT.—Are you trying to dispute Mr. Wilcox now?

Mr. BLAKESLEE.—No. This other witness said Mr. Wilcox was present on that occasion.

Mr. LYON.—Oh, he said he might have been.

Mr. BLAKESLEE.—Mr. Bole testified about that.

Mr. LYON.—It is the same occurrence.

A. No, sir; I don't remember of any such occurrence. [565—504]

Q. (By Mr. BLAKESLEE.) Now, at any time did Mr. Bole ever make a chalk sketch for you upon the floor, of such a single-piece key device as used in the Wilson under-reamer?

A. Not that I reemmbber of.

Q. Mr. Bole has testified something about the production of rectangular springs in the Wilson under-reamer. Had any such rectangular springs been used in the Wilson under-reamer before that time?

A. Yes, sir.



(Testimony of E. C. Wilson.)

Q. When, and under what circumstances?

A. We had used them years before that, in 1906 and 1907; at least 1907 and 1908. I am sure as early as that they were used in the reamers, as we manufactured them in Bakersfield.

Q. I show you a blue-print and ask if you know anything about that?

A. Yes, sir. This is a blue-print of a working drawing of old-style slotted tee bar and Wilson under-reamer type—slotted tee bar type, and which drawings were made in Bakersfield.

Q. Is there any sort of a spring shown in that?

A. Yes, sir.

Q. What kind of a spring?

Mr. LYON.—We object. The blue print is the best evidence.

The COURT.—I don't see the importance of it at all.

Mr. BLAKESLEE.—We simply want to show by shop evidence that those rectangular springs were used in that shop before.

The COURT.—Go ahead.

A. This is the rectangular spring, and were the springs used in this reamer in Bakersfield.

Q. (By Mr. BLAKESLEE.) This coil at the lower right-hand portion of the drawing is the rectangular spring, is it?

Mr. LYON.—We object, on the ground that the blue-print speaks for itself. [566—505]

The COURT.—Yes.

Q. Does that show a rectangular spring?

(Testimony of E. C. Wilson.)

A. Yes.

The COURT.—All right.

Mr. LYON.—We don't deny that in Bakersfield they used the rectangular spring at that time, so far as that goes.

The COURT.—All right. Then there will be no necessity for this testimony.

Q. By Mr. BLAKESLEE.—How long and how late were such springs used?

A. We are still using them.

Q. At any time did you ever discontinue their use?

A. In certain sizes of reamers we possibly did.

Q. I show you Complainant's Exhibit "E," and ask you when you first saw that.

Mr. LYON.—What is that?

Mr. BLAKESLEE.—Bole Sketch.

Mr. LYON.—That is objected to as irrelevant and immaterial.

The COURT.—What is the difference? There is no claim that he ever had seen it, is there?

Mr. LYON.—We don't claim he ever saw it until it was produced.

The COURT.—Are you trying to prove a negative now?

Mr. LYON.—No, I want to show when he first saw it. That is positive.

Q. (By the COURT.) When did you first see it?

A. The day it was introduced in testimony.

Q. (By Mr. BLAKESLEE.) In the interference proceeding?

A. In the interference proceeding.

(Testimony of E. C. Wilson.)

Q. Did you ever see any order such as Mr. Bole has told us about which went through the pump department or any other of the departments of the Wilson & Willard Manufacturing Company in 1911 for making up a single-piece key such as we are discussing? [567—506] A. I did not.

Q. Have you endeavored, among the records of the defendant company, to determine whether there was any such order? A. I have.

Q. When? A. Recently.

Q. Now, Mr. Bole has testified that after he got back from Maricopa, in 1908, the latter part of September, he took up with Mr. Willard, then interested in your company, the question of this order for the reamer for the Sunset-Monarch Oil Company, with the single-piece key, and that Mr. Willard told him he had taken that matter up with you and you had refused to allow any changes to be made in the Wilson reamer. What have you to say as to this?

A. There was nothing of that sort done whatever. I was in Bakersfield, and heard nothing of it at all.

Q. Did you have any communications with Mr. Willard at that time about the work in your shop down here in Los Angeles?

A. Yes; we had correspondence practically every day.

Q. Did Mr. Willard at that time send you any paper, order, or other memorandum of any such order for such single-piece key device for the Wilson reamer? A. No, Sir.

Q. Mr. Bole has testified that he said to you, before

(Testimony of E. C. Wilson.)

you commenced making the Wilson single-piece key reamer, "Why don't you make the kind of key I told you about?" Didn't Mr. Bole ever ask you that question?     A. He did not.

Q. Did you ever tell Mr. Bole at any time that you were afraid mud would get into the working parts of the reamer if the single-piece key was used, and would interfere with the operation of the reamer?

A. Not in connection with the key part of a reamer.  
[568—507]

Q. Did you ever have any such trouble with the Wilson reamer?     A. I never did.

Q. Did you ever know of any such trouble occurring in the field?     A. I never heard of it.

Q. Did Mr. Bole, in your presence, ever drive a key into a Wilson reamer, other than this morning in the court here?

A. I believe that is the first time I ever saw Mr. Bole drive a key in a Wilson under-reamer—this morning, here, in this room.

Q. Do you recollect of his ever having done so?

A. Not to my recollection; no, sir.

Q. Did you ever see Mr. Bole lift up and drive a key out of a Wilson reamer?

Mr. LYON.—Object to that as being a mere repetition.

The COURT.—I think so. There is no claim he ever did so except on one occasion, and he has denied that occasion.

Mr. BLAKESLEE.—Question withdrawn.

Q. Mr. Bole testified that at the conference which

(Testimony of E. C. Wilson.)

took place when the Bole Pump Company account was settled, the 1st of February, 1913, that you asked him about the key matter and wanted to know if he would not throw in the key, this invention, in the settlement of that pump account, and he would not do it, that he simply refused to do so, and that Mr. Willard was then present. What have you to say as to this?

Mr. LYON.—We object to that, on the ground that it has already been gone over. This witness has given his version of that conversation.

The COURT.—He has a right to deny it categorically—that he stated that—if he wants to.

A. Mr. Bole made no such request.

Mr. LYON.—We move to strike out the answer from the record, [569—508] on the ground that it is not responsive.

Mr. BLAKESLEE.—We consent. Read the question.

(Question read by the reporter.)

Q. (By the COURT.) Did that occur or not?

A. It did not.

Q. Nothing of that kind was said?

A. Not in that line. I objected to putting the key matter in this agreement. He asked why it was not in there.

Q. You have told what occurred? A. Yes.

Q. (By Mr. BLAKESLEE.) Have you any knowledge or recollection of any act done by Mr. Bole in the shop of the Wilson & Willard Manufacturing Company, at any time, with respect to making a



(Testimony of E. C. Wilson.)

single-piece key for Wilson's reamer, and fitting it in the reamer?

Mr. LYON.—I object to that as leading. I think that is a mere repetition. He has been all over that question.

The COURT.—I think that is a repetition; but I will let him answer it.

A. Not unless the suggestion of prying the key out with a lever would be an "act" within that scope.

Q. (By Mr. BLAKESLEE.) That is all you recollect in that connection?

A. That is all I can recollect.

Q. Prior to that time had Mr. Bole ever mentioned to you the possibility of prying up a single-piece key and driving it out?

Mr. LYON.—We object to that, on the ground that it is a repetition.

The COURT.—I don't see any necessity of that question.

Mr. BLAKESLEE.—That is all.

Cross-examination.

(By Mr. LYON.)

Q. Mr. Wilson, you were in Los Angeles either in the latter [570—509] part of September of 1908 or the fore part of October, 1908, and at the place of business of the Wilson & Willard Manufacturing Company, were you?

A. I couldn't say definitely that I was.

Q. Will you state now that you were not?

A. There is nothing I can recall definitely that I was or was not.

(Testimony of E. C. Wilson.)

Q. To refresh your recollection, your brother, W. W. Wilson, had just at that time commenced work there, hadn't he, and was attempting to keep the books of account, and so forth?

A. It was some time in the summer or fall of 1908. I don't remember the exact date myself.

Q. Now, after producing the binder folio and order No. 709, of the Wilson & Willard Manufacturing Company bearing date September 18, 1908, and referring to the  $9\frac{5}{8}$  inch under-reamer which was manufactured for and shipped to the Sunset-Monarch Oil Company on this order received by Mr. Bole, you were asked this question: "And in the last portion of your answer you have produced another book and referred to the binder folio No. 437, order received from Heber, Salesman, Bole. Have you any personal knowledge of this particular order?"

A. The only knowledge I have of it is the notation I have made in red pencil designating to what account the item should be credited. At that time I was instructing my brother, W. W., how to keep the accounts, and made that notation on the sheet itself. Aside from that, I know nothing about the sale, other than as it would ordinarily come to my notice on our records, at the time I made the notation. Q. 888. Do you know when you made this particular notation? A. Undoubtedly at the end of the month, just prior to the posting of the month's business." You gave that testimony, didn't you? A. Yes, sir.

Q. And was it true and correct, to the best of your recollection, at the time of giving it? [571—510]

(Testimony of E. C. Wilson.)

A. I know they were very much behind in their bookkeeping, and it might be possible that that was not posted until the first part of October.

Q. Well, the statement therein contained is true and correct to the best of your knowledge—

A. Yes.

Q. —that you assisted your brother in making the posting of that entry?      A. That is right.

Q. And you must have been in Los Angeles, in order to do that?      A. Yes, sir. I was here.

Mr. LYON.—That is all. [572—511]

**[Testimony of Arthur G. Willard, for Defendants.]**

ARTHUR G. WILLARD, recalled, testified on behalf of the defendants as follows:

Direct Examination.

(By Mr. BLAKESLEE.)

Q. You have testified previously in this case for the defendants?      A. Yes, sir.

Q. Did you hear the testimony in this case of the complainant Robert E. Bole?

A. Part of it; the part that was given after two o'clock.

Q. During the month of September, 1908, do you remember any order of having been received by you or by the Wilson & Willard Manufacturing Company, the defendant, through you, from the complainant, Robert E. Bole, for an under-reamer?

A. Yes, sir.

Q. Where was Mr. Bole, if you know, when that order was sent in?

(Testimony of Arthur G. Willard.)

A. The order was sent in from Maricopa, California.

Q. How did the order come in?

A. Through the mail.

Q. Where did you receive that order?

A. At the shop of the Wilson & Willard Manufacturing Company.

Q. Didn't you receive it at your house?

A. No; I don't think so. It has always been my impression that I received the order at the office of the Wilson & Willard Manufacturing Company.

Q. What did that order call for?

A. Called for a  $9\frac{5}{8}$  Wilson under-reamer, with an extra set of 10-inch cutters and Bole casing-spear and 12 Bole pumps.

Q. What?

A. 12 Bole oil well-pumps. [573—512]

Q. Now, what was that order as you received it? What did it look like?

A. Well, that is pretty hard for me to answer. It is a long time ago.

Q. What sort of a reamer did it call for in detail?

A. The order, as I remember it, called for a  $9\frac{5}{8}$  inch Wilson under-reamer; and, in this letter or order that I received there was some mention of some change.

Q. Did that change relate to a single-piece key for the Wilson reamer?

Mr. LYON.—We object to that, on the ground that it is leading.

The COURT.—I will overrule the objection.

(Testimony of Arthur G. Willard.)

A. It has always been my impression that that change referred to the holding means.

Q. Was there any sketch in that order?

A. Not that I remember of.

Q. Have you any recollection of any sketch or any showing, other than the written part of the order, of what the reamer was to be?

A. Not definitely, no, sir.

Q. Can you tell us anything of that sort that you remember about that order?

A. No; nothing any more than I received the order for these different articles.

Q. How soon after you received this order was work commenced upon it?

A. Oh, to the best of my recollection, it was two or three days.

Q. Was there any delay incident to taking up that work that you remember?

A. Not that I know of, no, sir. [574—513]

Q. Did you communicate with Mr. E. C. Wilson, the defendant, about that particular reamer, in any way?

A. Not that I know of; no, sir.

Q. Do you recollect about communicating with him in any way?

A. No, sir, not definitely; no, sir.

Q. Have you any such recollection?

A. No, sir.

Q. Did you send Mr. Wilson that order, or any letter regarding it, or any telephonic message, or communication of any kind?

A. Not that I remember of. Now, I would not



(Testimony of Arthur G. Willard.)

state positively; but I don't think I did. I may have told Mr. Wilson—thinking it over afterwards, I may have told Mr. Wilson over the long-distance telephone that we had had an order or Mr. Bole had sent down an order.

Q. Do you remember anything about such a communication?

A. No; I don't remember anything about it. But I may have told Mr. Wilson over the long-distance phone that we had received an order from Mr. Bole for a  $9\frac{5}{8}$  inch reamer. If I communicated with Mr. Wilson at all, it was over the long-distance telephone.

Q. When Mr. Bole returned from Maricopa after that trip did you discuss that order with him?

A. Yes; to a certain extent.

Q. Did you tell him that you had communicated with Mr. Wilson about that order and that Mr. Wilson refused to make any change in the reamer?

A. Not that I remember of.

Q. You have no recollection as to that?

A. None whatever.

Q. Did you tell him that the order would have to be filled with some other reamer than that that he had specified?

A. I told him the reamer would have to be shipped as a standard reamer. [575—514]

Q. Yes. And what reamer was shipped on that order? A. A standard  $9\frac{5}{8}$  inch reamer.

Q. Was it different from any other reamer made in the factory? A. No, sir.

(Testimony of Arthur G. Willard.)

Q. Was any complaint received from the Sunset-Monarch Oil Company with respect to the nature of that reamer? A. Not that I remember of.

Q. (By the COURT.) What did you do with the letter and order?

A. Why, your Honor, it was filed away with the shipping order, to the best of my recollection.

Q. Down here in the Wilson & Willard Manufacturing Company's shop? A. Yes, sir.

Q. When did you last see it?

A. Not since 1908, that I remember of.

Q. Who has had charge of the records since then?

A. Why, at that time Mr. Wilson's brother was in the shop and acting in the capacity of bookkeeper, and he had charge of the records at that time.

The COURT.—Go ahead.

Mr. BLAKESLEE.—And have there been any losses that you know of, by fire or otherwise, of the records of the Wilson & Willard Manufacturing Company since the receipt of that order?

A. Not that I know of.

Q. Were there while you were with the company?

A. Not that I know of.

Q. Now, when was it, as a matter of fact, that you first saw any sketch of such a single-piece key device for such reamer?

The COURT.—I don't see the importance of that—when he saw it.

Q. (By Mr. BLAKESLEE.) You have known Mr. Wilson and Mr. Bole, both, intimately, for a good many years, haven't you? [576—515]

(Testimony of Arthur G. Willard.)

A. Yes, sir.

Q. Now, have you any established belief as to who was the originator of that single-piece key device of the Wilson reamer?

Mr. LYON.—I object to that on the ground that it is calling for the mere belief, and incompetent.

Mr. BLAKESLEE.—I will admit that is hardly within the straight rules of evidence; but I think that here is a witness who is peculiarly able to throw light upon this involved and entangled situation because of his intimate knowledge of both of these parties and his long experience with them, and who was present at that shop during all this long period which includes these various acts.

The COURT.—I believe if we were trying this case in France that would be proper evidence; but I don't think it is in America. I sustain the objection.

Q. (By Mr. BLAKESLEE.) Were you ever present in the shop of the Wilson & Willard Manufacturing Company when Mr. Bole attempted to get a key out of the Wilson reamer, that is, a single-piece key?

Mr. LYON.—Objected to as immaterial. There is no such claim. Not rebuttal.

The COURT.—Objection sustained.

Q. (By Mr. BLAKESLEE.) That is all.

The COURT.—Stand down.

Mr. LYON.—Just a question or two, your Honor, here now.

The COURT.—Isn't this largely covered by the

(Testimony of Arthur G. Willard.)

deposition of this witness which was taken and introduced in evidence?

Mr. LYON.—All except one question or two, and I will rely on the deposition for the rest of my cross-examination. [577—516]

Cross-examination

(By Mr. LYON.)

Q. You used the term here this afternoon that it was your recollection that in this order for the Sunset-Monarch reamer, sent down by Mr. Bole in September, 1908, there was either a sketch or some description of some change to be made in the holding means. What do you mean by “holding means” in that answer?

The COURT.—I didn’t understand that myself.

A. I mean by the words “holding means” the means that help to confine the spring within the body of the reamer.

Q. (By Mr. LYON.) And hold up the—

A. Tee bar.

Q. The spring actuation—

A. Hold up the tee bar.

(Adjourned until Saturday, March 27, 1915, at 10 o’clock A. M.) [578—517]

Saturday, March 27, 1915, 10 o’clock A. M.

The COURT.—In regard to this deposition, I will take the question submitted under advisement. I see that under Rule 46 there is an amendment there by which if the deposition is excluded it shall be put into the record for consideration by another court that might pass upon this matter. While I expect

(Testimony of Arthur G. Willard.)

to exercise an independent judgment when I come to decide the question, regardless of that method of procedure, nevertheless, in these equity cases, according to the practice, whether the deposition is excluded or admitted would probably not have the same effect as if it were an action at law. So I will take that under advisement and decide it prior to my final decision. You can argue it further, gentlemen, if you desire, at the time of the final argument in this case. You may in the meantime by industry find some further authority that will throw light upon the controversy. I am not satisfied with it. I will say, however, that I think the better practice in a case of this kind would be to make a motion to suppress the deposition. Then when the trial comes the people can be ready to proceed with the trial. I do not understand that there is any claim made here that there was not notice given of this. There is no claim that there was any statement made to the attorney for the plaintiff that the notice was insufficient until here at the very close of the plaintiffs' case, and I don't think that it is a practice to be commended in a court of equity. You may call your next witness, Mr. Blakeslee.

Mr. BLAKESLEE.—I wish to recall Mr. Houriet for one or two brief questions. [579—518]



[**Testimony of A. W. Houriet, for Defendants  
(Recalled in Rebuttal).]**

A. W. HOURIET, previously sworn and examined, being recalled by defendants in rebuttal, testified as follows:

Direct Examination.

(By Mr. BLAKESLEE.)

Q. You have previously testified in this case for the defendant?     A. Yes, sir.

Q. Have you been able to find any memorandum or sketch, or the like, which would refresh your recollection as to how the slot was drilled through the tee bar in the first reamer 120?

Mr. LYON.—If your Honor please, we object to this as not sur-rebuttal.

The COURT.—It seems to me like you went into that.

Mr. LYON.—He has been all over that.

Mr. BLAKESLEE.—He has found new evidence—a sketch which shows definitely just what was done as to that; verifies that. That is the only reason.

The COURT.—Oh, you mean to clarify it?

Mr. BLAKESLEE.—That is the only reason.

A. Yes, I have. (Witness produces a sketch.)

Q. Did you make that sketch?     A. Yes, I did.

Q. And when?

A. At the time I drilled the tee bar.

Q. For this reamer 120?     A. Yes, sir.

Q. What does it show as to the way in which the slot was placed?

Mr. LYON.—We object on the ground that it is

(Testimony of A. W. Houriet.)

incompetent. The sketch will speak for itself.

The COURT.—Yes; the sketch will speak for itself. [580—519]

Q. (By Mr. BLAKESLEE.) Now, from so refreshing your recollection how was the slot drilled through that tee bar with respect to any angle to the ears that hold the cutters?

A. It was drilled through the—

The COURT.—Louder, please. I can't hear you.

A. It was drilled opposite from the way the ears are on the tee bar.

Q. (By the COURT.) At right-angles to the ears on the end of the tee bar?

A. Yes, sir, at right-angles.

The COURT.—All right.

Q. (By Mr. BLAKESLEE.) And that agrees, does it, with the showing of this sketch?

The COURT.—Wait a minute. That sketch shows for itself.

Q. (By Mr. BLAKESLEE.) And then what did you do as to drilling the body of that reamer?

Mr. LYON.—We object to that on the ground that it has all been gone over and it is mere repetition.

The COURT.—Yes.

Q. (By Mr. BLAKESLEE.) You have nothing further to say as to drilling the body?

Mr. LYON.—We object on the ground it is not rebuttal.

The WITNESS.—The only thing I have on the drilling of the body—

The COURT.—The objection is sustained.

(Testimony of A. W. Houriet.)

Mr. LYON.—The only matter that is material is to test the reliability of the witness' memory, any way.

Mr. BLAKESLEE.—That is all.

Mr. LYON.—That is all.

The COURT.—Yes. Mr. Houriet, you may remain. I may want to interrogate you further in this case.

Mr. BLAKESLEE.—We offer in evidence the sketch just produced by the witness as "Defendants' Exhibit Houriet Sketch."

(Marked Exhibit 13.) [581—520]

The COURT.—Proceed, Mr. Blakeslee.

**[Testimony of E. F. Grigsby, for Defendants (in Rebuttal).]**

E. F. GRIGSBY, called and sworn as a witness on behalf of defendants, testified in rebuttal as follows:

Direct Examination.

(By Mr. BLAKESLEE.)

Q. Please state your full name, age, residence and occupation.

A. E. F. Grigsby; thirty-six years old; foreman in the repair shop department of the Ford Motor Company.

Q. You reside in Los Angeles? A. Yes, sir.

Q. Did you at one time work for the defendant Wilson & Willard Manufacturing Company?

A. Yes, sir.

Q. When did you quit that connection?

A. It was sometime in December, 1911, as near as I can recollect.

(Testimony of E. F. Grigsby.)

Q. You have no business relations with the defendant company now or with Mr. Wilson?

A. No, sir.

Q. I show you Defendants' Exhibit "E" in this case, and ask you if you have ever seen it before, and, if so, when?

A. The first time that I ever remember seeing this was in Mr. Lyon's office, as near as I can recollect.

Q. You mean the attorney for the complainant?

A. Yes, sir.

Q. When was that?

A. I don't know the exact date; it was several months ago, I know.

Q. At the time Mr. Lyon was taking testimony for Mr. Bole in an interference case?

Mr. LYON.—September 24, 1914.

A. Yes, sir. About that time.

Q. (By Mr. BLAKESLEE.) How did you come to see it then? [582—521.]

A. I believe Mr. Lyon showed it to me there.

Q. Had you ever seen it before?

A. Not to the best of my recollection.

Q. Did you ever witness anything for Robert E. Bole, the complainant, on tracing linen?

Mr. LYON.—We object to that.

The COURT.—The question is whether he witnessed that, to get it straight as rebuttal.

Mr. BLAKESLEE.—Yes, sir.

The COURT.—Get at it directly.

A. Not that I remember of. I don't remember ever signing tracing paper. I never had any occa-

(Testimony of E. F. Grigsby.)

sion to use it and I don't remember of ever signing it on tracing paper for anyone.

Q. (By Mr. BLAKESLEE.) Did you ever discuss with Mr. Bole or did Mr. Bole ever talk to you about anything such as you can make out from that sketch?

Mr. LYON.—That is objected to as calling for a conclusion of the witness.

The COURT.—I will let him answer it.

A. Not that I remember of.

Q. (By the COURT.) Is that your name on there? A. Yes.

Q. Did you sign it?

A. Not to my knowledge.

Q. What is your best opinion about it?

A. It looks like my handwriting, but I don't ever remember of signing it.

Q. And you say your idea is that you did not sign it because you don't remember to have signed it?

A. It looks like my writing, all right, but I don't remember of ever signing my name on tracing paper. I don't remember of any time in my life that I ever did use tracing paper for any reason.

Q. Is that the way you usually sign your name?  
[583—522]

A. Yes, sir. I sign it a little different now.

Q. That is the way you signed it at that time?

A. Yes, sir. I hardly ever sign my name exactly the same. Sometimes I run all the letters together and sometimes I don't. It is according to the way I start out.



(Testimony of E. F. Grigsby.)

The COURT.—Go ahead.

Q. (By Mr. BLAKESLEE.) Is that the way you would sign your signature on a surface the size of that exhibit?

Mr. LYON.—That is objected to.

The COURT.—He has already testified and covered that question.

Mr. BLAKESLEE.—He says he would sign his signature at different times and under different circumstances differently.

The COURT.—Well, get at it then.

A. Well, on a piece of paper of that size a person would naturally write his name smaller, I should judge.

Q. (By Mr. BLAKESLEE.) And would you?

Mr. LYON.—Objected to as merely calling for a conclusion and leading.

The COURT.—I think so. The objection is sustained.

Mr. BLAKESLEE.—That is all.

Cross-examination.

(By Mr. LYON.)

Q. You appeared at my office in the interference proceedings in response to a subpoena of this court served upon you, didn't you? A. Yes, sir.

Q. You had no talk with me until you were put on the stand? A. With you?

Q. Yes. A. No, sir.

Q. And you were presented with this sketch "Complainants' Exhibit E" and asked if you had ever seen it before? A. Yes, sir. [584—523]

(Testimony of E. F. Grigsby.)

Q. And didn't you in that proceeding testify that you would not state positively that you did not on January 27, 1911, see Mr. Bole make this sketch and at his request witness it?     A. No, sir.

Q. You didn't so testify?

A. Not that I remember of.

Q. Will you testify now positively that you did not on January 27, 1911, see Mr. Bole make this sketch and sign it as a witness at his request?

Mr. BLAKESLEE.—We object to the question unless the testimony is shown to the witness.

The COURT.—Well, he is asking an entirely different question now. The objection would have been good to the other question; not good to this. Objection overruled. (The question is read.) That is a fair question.

A. I don't remember it.

Q. (By Mr. LYON.) Will you state positively that you did not? That is the question.

The COURT.—I did not understand that he did not state that he did not. Is that right, Mr. Witness?

A. Yes, sir.

Q. (By Mr. LYON.) Then, your testimony summed up is that you have no recollection, that is all?     A. I don't remember it at all.

Q. You have no recollection of the matter whatever, that is all?     A. No, sir.

Q. You have testified in regard to this sketch twice heretofore, have you?

(Testimony of E. F. Grigsby.)

A. Yes, sir; I believe it is twice that I have been called on it.

Mr. LYON.—That is all. [585—524]

[**Testimony of W. H. Fahnestock, for Defendants  
(Recalled).**]

W. H. FAHNESTOCK, recalled for defendants, testified as follows:

Direct Examaination.

(By Mr. BLAKESLEE.)

Q. You testified before in this case for the defendants, didn't you? A. Yes, sir.

Q. I show you Complainants' Exhibit "E," an exhibit in this case, and ask you if you know anything about it. (Showing.)

Mr. LYON.—I object to the form of the question.

Mr. BLAKESLEE.—I suppose it is leading.

The COURT.—Overruled. Go ahead and answer the question.

A. The first time that I have any knowledge of seeing this sketch was in Mr. Blakeslee's office.

Q. (By Mr. BLAKESLEE.) Under what circumstances and when?

A. When I was called upon to testify in the case regarding this patent.

Q. You mean in the interference proceeding in which we were taking testimony last fall between Mr. Wilson and Mr. Bole?

A. I believe that is what you termed it, the interference proceeding.

(Testimony of W. H. Fahnestock.)

Q. That is the first time you ever saw that sketch?

A. To the best of my knowledge, it is.

Q. Did you ever at any time sign your name on a piece of tracing linen for Mr. Robert E. Bole, the complainant?

Mr. LYON.—We object to that as leading.

The COURT.—The question is whether he ever signed that document.

Mr. BLAKESLEE.—I was following the line of your Honor's question to his previous signature in connection with Grigsby. I thought that line was permissible if he ever signed, to show beyond a doubt as to whether he ever signed any— [586—525]

The COURT.—All right, ask him.

Mr. BLAKESLEE.—Did any such physical act?

A. That I couldn't say.

Q. (By the COURT.) Did you sign this instrument—this document?

A. I don't think that I did.

Mr. LYON.—We move to strike the answer from the record as not responsive.

The COURT.—Overruled. Denied. You don't think you signed? A. No, sir.

Q. (By the COURT.) Were you working there on that day in the shop?

A. Yes, sir; I went to work there in September, 1910.

Q. And knew Bole at that time?

A. Yes, sir. I saw him there, I think, the first

(Testimony of W. H. Fahnestock.)

day I worked there.

Q. What makes you think you didn't sign it?

A. Well, in signing sketches I would recall the thing if I was to see it afterwards.

Q. You think you would recall it? Is that like your signature? A. Yes, sir.

Q. The way you would sign it?

A. Yes, sir.

The COURT.—Take the witness.

Q. (By Mr. BLAKESLEE.) If you were to sign on a surface of that size you would sign in that manner?

Mr. LYON.—Objected to as merely hypothetical and leading, and it has already been shown that this piece of paper was larger.

Mr. BLAKESLEE.—It has not been shown.

The COURT.—I will overrule the objection. Let him answer.

A. I have made a study of my signatures for back as far as [587—526] ten years, since this case came up, and I find that the smaller the paper I signed, naturally I crowd my signature.

Q. (By Mr. BLAKESLEE.) Your signature runs smaller on surfaces that are larger than this, does it?

Mr. LYON.—We object to that as not the best evidence and a mere conclusion of the witness.

Mr. BLAKESLEE.—The witness knows how he signed his signature, and we want to know.

The COURT.—The objection is sustained.

Q. (By Mr. BLAKESLEE.) What has been your practice, from the specimens of signature that



(Testimony of W. H. Fahnestock.)

you have looked over, where you signed on a surface of this size or smaller?

Mr. LYON.—That is objected to as secondary evidence, and no foundation laid for it.

The COURT.—The objection sustained.

Q. (By Mr. BLAKESLEE.) Are you dependent on your salary from the Wilson & Willard Manufacturing Company for your maintenance of yourself and your family?

Mr. LYON.—Objected to as irrelevant and immaterial.

The COURT.—The objection is sustained.

Mr. BLAKESLEE.—That is all.

Mr. LYON.—Mr. Fahnestock—

Mr. BLAKESLEE.—Just a moment. There is another point I wish to touch on. Will you produce a record of the Wilson & Willard Manufacturing Company which shows the charges to the Bole Pump Company account or to the Bole Pump Company or Robert E. Bole on all items during the year 1911?

Mr. LYON.—Objected to as leading and calling for a conclusion. I don't see the purpose of such evidence.

Mr. BLAKESLEE.—We wish to show as to the pumps Mr. Naphas told us about yesterday—as to whether any such pumps were made in that shop during that year. Mr. Naphas stated specifically that [588—527] certain pumps were made in 1911.

The COURT.—And your purpose is now to examine the books and to show that there were no such

(Testimony of W. H. Fahnestock.)

charges to that effect?

Mr. BLAKESLEE.—We wish to show that there were no charges for work made to Mr. Bole or to the Bole Pump Company in the year 1911 on any such pumps as Mr. Naphas told us about, and thereby prove that no such pumps were made in that shop during that year. It is square rebuttal.

The COURT.—I think it is a collateral matter, anyhow; I will sustain the objection to it. You are attempting to prove a negative by what is not in the book. You can show what is in the books, but you can't expect the Court to examine the books to find out that there is not something in it—that certain things are not there.

Mr. BLAKESLEE.—He can show from this book the first time that such pump was made, and that squarely rebuts Naphas as to the date upon which he said such pumps were first made.

The COURT.—That would only show what the books show as to when the first pumps were made, as appears from that book. It would not show that the books did not have a charge at some other time.

Mr. BLAKESLEE.—We will ask the witness if that book shows all the charges for that period to that Pump Company and then to show the first date that any such charge was entered.

The COURT.—I will let you ask the witness if there were any such pumps made in there at any time, and then he can state what his information is on it.

(Testimony of W. H. Fahnestock.)

Mr. BLAKESLEE.—Do these books show charges—

The COURT.—I won't permit that.

Q. (By Mr. BLAKESLEE.) Do you know when the first charges were made to the Bole Pump Company for 4 and 4½ inch pumps?

Mr. LYON.—We object to that. [589—528]

The COURT.—Objection sustained. Does this witness know anything about—

Q. (By Mr. BLAKESLEE.) Do you know anything about the manufacture of pumps for the Bole Pump Company at the shop of the Wilson & Willard Manufacturing Company?

A. Yes, sir; when I went there, and sometime afterwards, there was machinery on one side of the house, although their operations were not confined particularly to those machines. But those boys over there were known as the "pump crew." They worked on Bole pumps. Those pumps were used for oil wells.

Q. (By Mr. BLAKESLEE.) And did you have anything to do with keeping the account of material and labor supplied to that department?

Mr. LYON.—We object to that as immaterial.

The COURT.—Sustained.

Mr. LYON.—It is to the making that we want, isn't it?

The COURT.—That is what the Court ruled.

Q. (By Mr. BLAKESLEE.) What do you know as to the first making of pumps for that department?

(Testimony of W. H. Fahnestock.)

Mr. LYON.—We object to that on the ground that it is incompetent; no foundation laid.

The COURT.—If the witness knows he may answer.

A. We were making pumps there when I went there, and orders came in at various times for different size pumps.

Q. (By Mr. BLAKESLEE.) Do you know when the first 4½-inch pumps were made in that department?

Mr. LYON.—Objected to as leading. It is not shown—

The COURT.—Overruled.

A. I only know from the records in that book.

Q. (By Mr. BLAKESLEE.) Can you tell us by referring to those records?

Mr. LYON.—We object to that on the ground that it is irrelevant, [590—529] immaterial, incompetent, and the man himself has no knowledge of the making at all.

The COURT.—This witness does not seem to know anything about it except from the books. It would be secondary evidence when he got it and put it in the books, if he kept the books. I think it is secondary evidence. You can ask somebody that knows about the pumps, if you want to contradict that, somebody in charge of the pump department.

Q. (By Mr. BLAKESLEE.) You don't know anything further, then, as to the date when those 4½ inch pumps were first made in that department?

Mr. LYON.—We object on the ground that this

(Testimony of W. H. Fahnestock.)

witness has not shown that he knows anything about the making of any pump.

The COURT.—I will overrule the objection.

(Last question read by the reporter.)

A. The 4 and 4½ inch pumps were rather an odd size. I think they were used for pumping water instead of oil.

Q. (By the COURT.) Do you know whether any such pumps were manufactured there?

A. Yes, sir.

Q. When were they first manufactured according to your best information.

A. I would have to refer to the record there.

Q. Haven't you already referred to it? Haven't you been examining those records? A. Yes, sir.

Q. Haven't you got any mememory now about it?

A. I marked the place there in the book.

Q. And you don't know when the first ones were manufactured?

A. According to the record there I believe it is 1911, in February.

Q. In February, 1911? [591—530]

A. Yes, sir.

Q. Well, now—

A. I won't say positively whether it was 1911 or '12, because I only had a short time to look through that book. It is quite a job.